

United States
Circuit Court of Appeals

For the Ninth Circuit.

ARTHUR A. KLINE,

Appellant,

vs.

THE ARIZONA MUTUAL SAVINGS AND
LOAN ASSOCIATION, a Corporation, THE
ARIZONA TRUST COMPANY, a Corpora-
tion, and SIMS ELY, as Receiver of The Ari-
zona Mutual Savings and Loan Association
and as Receiver of The Arizona Trust Com-
pany,

Appellees.

Transcript of Record.

Upon Appeal from the United States District Court for the District
of Arizona.

Filed

DEC 20 1915

F. D. Monckton,
Clerk.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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[Bill in Equity.]

*In the District Court of the United States for the
District of Arizona.*

IN EQUITY—E-25.

ARTHUR A. KLINE,

Complainant,

vs.

THE ARIZONA MUTUAL SAVINGS AND LOAN
ASSOCIATION, a Corporation; THE ARI-
ZONA TRUST COMPANY, a Corporation;
and SIMS ELY, as Receiver of THE ARI-
ZONA MUTUAL SAVINGS AND LOAN
ASSOCIATION, and as Receiver of THE
ARIZONA TRUST COMPANY,

Defendants.

To the Honorable Judge of the United States Dis-
trict Court for the District of the State of Ari-
zona:

Arthur A. Kline, a citizen of the State of Texas,
residing in the City of El Paso, El Paso County, in
said State, brings this his bill against The Arizona
Mutual Savings and Loan Association, a corpora-
tion duly organized and existing under the laws of
the State of Arizona, and having its principal place
of business at the City of Phoenix, in Maricopa
County in said State and a citizen of said State and
District of Arizona; The Arizona Trust Company,
a corporation, duly organized and existing under the
laws of the State of Arizona, and having its prin-
cipal place of business at the City of Phoenix, in

Maricopa County, State of Arizona, and a citizen of said County and State and District of Arizona; and Sims Ely, as Receiver of the Arizona Mutual Savings and Loan Association, and as receiver of The Arizona Trust Company, a citizen of the State of Arizona, residing at the City of Phoenix, in Maricopa County, in said State and District, leave to sue said receiver having been first had and obtained under order of [2*] this Court made and entered in equity cause Numbered 53 in this court on the 1st day of July, 1914;

And, therefore, the complainant herein, Arthur A. Kline, complains of said defendants and each of them and says:

I.

That said complainant, Arthur A. Kline, is a citizen of the State of Texas, residing at the City of El Paso, County of El Paso, in said State of Texas, and that the defendant, Sims Ely, as receiver of The Arizona Mutual Savings and Loan Association, and as receiver of The Arizona Trust Company, is a citizen of the State of Arizona, residing at the City of Phoenix, Maricopa County, in the State and District of Arizona, and is now the duly appointed, qualified and acting receiver of the Arizona Mutual Savings and Loan Association and the Arizona Trust Company in that cause now pending in the above-named court upon the equity side thereof, entitled Charles W. Clark versus The Arizona Mutual Savings and Loan Association and the Arizona Trust Company, which cause is known upon the dockets

*Page-number appearing at foot of page of original certified Record.

thereof as equity suit Number 53, and that said defendants herein, The Arizona Mutual Savings and Loan Association and The Arizona Trust Company, are, and each of them is a corporation, duly organized and existing under the laws of the State of Arizona, with their respective places of business at the City of Phoenix, Maricopa County, State of Arizona, and respectively citizens and residents of said State and District of Arizona.

That the matter in controversy, or the matter in dispute, between the complainant herein and said defendants, exceeds, exclusive of interest and costs, the sum of Three Thousand Dollars (\$3,000.00).

II.

That heretofore, to wit, on the 2d day of March, 1912, the defendant, The Arizona Trust Company, for value, made, executed [3] and delivered to the complainant herein its certain promissory note wherein and whereby it promised to pay to the order of the complainant, on or before July 1st, 1912, at The Valley Bank of Phoenix, at Phoenix, Arizona, the sum of Five Thousand Five Hundred and Thirty-two Dollars (\$5,532.00), with interest thereon at the rate of Eight (8%) per cent per annum, payable at maturity, from date until paid, and the additional sum of five (5%) per cent as attorney's fees on the amount found due in the event suit was brought on said note.

That in order to secure the payment of said note when the same became due, the said defendant, The Arizona Trust Company, at the same time endorsed in blank and delivered to said Valley Bank in pledge

for the use of said complainant certain negotiable notes secured by mortgage on real estate in Arizona as follows:

No.				
119	E. E. Wallen,	Bisbee,	\$1,500.00	\$1,500.00
246	E. W. Booker,	Globe,	500.00	500.00
250	E. E. Smith, et al.,	Wickenburg,	339.25	400.00
253	O. W. Jennings, et al.	"	688.00	800.00
258	Thos P. Alger,	Safford,	564.00	600.00
261	Phoenix Construction Co.,	Phoenix,	1,982.00	2,000.00
			<u>\$5,573.25</u>	<u>\$5,800.00</u>

That each and all of said notes and mortgages so delivered as aforesaid to the Valley Bank of Phoenix, were, by agreement of the complainant and said defendant, The Arizona Trust Company, delivered as collateral security for the payment of said principal note of the said defendant, The Arizona Trust Company, in the sum of Five Thousand Five Hundred and Thirty-two Dollars (\$5,532.00), together with interest thereon and attorney's fees as aforesaid.

That the complainant herein is now and has been at all times since the execution and delivery of said principal note the owner and holder thereof, and that said note is now wholly unpaid, except the sum of Two Hundred Dollars (\$200.00) interest paid thereon August 17th, 1912, and that there is now due and owing from said defendant, The Arizona Trust Company, to this complainant, the sum of Five Thousand Five Hundred and Thirty-two Dollars (\$5,532.00), with interest thereon at the rate of Eight (8%) per cent per [4] annum from the 17th day of August, 1912, together with five (5%)

per cent additional on the amount found due on said note as attorney's fees.

That no part of said principal note of the said defendant, The Arizona Trust Company, was paid when due, and pursuant to the terms of the agreement of said complainant and the said defendant, The Arizona Trust Company, made at the time of the delivery of said collateral security to said Valley Bank, the said Valley Bank, on or about the 17th day of September, 1912, delivered to the complainant herein all of the said collateral notes, together with the mortgages securing the same, and this complainant now holds said collateral as security for the payment of said principal note given him by the said defendant, The Arizona Trust Company.

That after the maturity of said principal note said complainant made demand of said defendant, The Arizona Trust Company, for the payment of said principal note, but that said defendant Trust Company failed and refused to pay said note, and there is now due and owing to this complainant on said principal note the sum of Five Thousand Five Hundred and Thirty-two Dollars(\$5,532.00), with interest thereon at the rate of eight (8%) per cent per annum from the 17th day of August, 1912, together with five (5%) per cent additional on the amount found due on said note as attorney's fees.

Complainant further says that long after said transactions where had by him with the said defendant, The Arizona Trust Company, and long after the said collateral security was delivered as aforesaid to the said Valley Bank, for the use and benefit of

the complainant herein, upon a bill of complaint filed in this court by one Charles W. Clark against the defendant, The Arizona Mutual Savings and Loan Association and The Arizona Trust Company, which action is now pending in said court, and known upon the dockets thereof as equity suit Number 53, the said defendant, Sims Ely, was, by said Court, duly appointed receiver of the [5] assets of said defendants, The Arizona Mutual Savings and Loan Association and The Arizona Trust Company, and that said defendant, Sims Ely, is now the duly appointed, qualified and acting receiver in said pending equity suit, and as such receiver is now, and has been since his appointment therein, making claim to the right of possession and control of said collateral security as part of the assets of The Arizona Mutual Savings and Loan Association.

That the complainant herein prior to the institution of this suit offered to surrender to said defendant receiver the said collateral upon payment to him by said receiver of the said principal sum with interest due upon said principal note as aforesaid, but that said receiver has refused and does now refuse to pay the amount due upon said principal note as aforesaid.

That heretofore, to wit; on the 29th day of June, 1914, this complainant filed in said equity suit Number 53 now pending in said court, his verified written motion praying therein for leave to commence and prosecute in said court an independent suit against said receiver, on said principal note and to foreclose his lien on said collateral security now held by him,

and that thereafter, to wit; on the 1st day of July, 1914, upon a hearing on said motion, said Court made and caused to be entered in said equity suit No. 53, an order authorizing and granting leave to this complainant to commence and prosecute against said receiver an independent suit in said court on said principal note and to foreclose his lien on said collateral security now held by him.

This complainant further alleges upon information and belief, that the Arizona Mutual Savings and Loan Association, one of the defendants herein, claims some right, title and interest in and to the aforesaid collateral the extent and nature of which claim is to this complainant unknown.

IN CONSIDERATION WHEREOF, And inasmuch as your complainant has no adequate remedy at law, he therefore prays the aid of this Court:
[6]

1. That the said defendant may be required to make answer respectively to all and singular the matters hereinbefore stated, but not under oath, answer under oath being hereby expressly waived.

2. That upon the final hearing of this cause it be ordered and decreed that the defendants, The Arizona Trust Company and Sims Ely, as receiver of the Arizona Trust Company, do pay to the complainant the sum of Five Thousand Five Hundred and Thirty-two Dollars (\$5,532.00), together with interest thereon at the rate of eight (8%) per cent per annum from the 17th day of August, 1912, and the additional sum of (5%) per cent on the amount found due on said note as attorney's fees, and costs.

3. That is be further ordered and decreed that the lien of the complainant upon the said collateral security for the several amounts aforesaid be declared to be a valid lien upon all of such property.

4. That unless the said receiver shall pay within a short time to be fixed by this Court, into this court, for the benefit of this complainant the said sum of Five Thousand Five Hundred and Thirty-two Dollars (\$5,532.00), together with interest thereon at the rate eight per cent per annum from the 17th day of August, 1912, and the further sum of five per cent on the amount found to be due as aforesaid as attorney's fees, together with the costs and expenses in this suit incurred, then, that the said defendants and all of them and all persons claiming under or through them or either of them, may be forever barred and foreclosed of and from any equity of redemption of and all claim or interest in the said collateral security aforesaid, and that all and singular the said collateral security mortgaged and pledged to your complainant or held by him subject to lien may be sold in one parcel and as an entirety under a decree of this Honorable [7] Court and that this complainant be permitted to become a purchaser of said property at such sale and that in case of the insufficiency of the proceeds of said sale to pay in full the amount of the principal and interest, attorney's fees, costs and accruing costs, that a judgment may be rendered in this cause for such deficiency against the defendant, The Arizona Trust Company, and that the complainant be permitted to file said judgment for such deficiency

as a general creditor of The Arizona Trust Company in said equity cause No. 53 aforesaid.

5. That your complainant may have such other and further relief in the premises as may be just and equitable and as to your Honor shall seem just.

To the end that complainant may obtain the result prayed for herein, may it please your Honor to grant to your complainant a writ or writs of subpoena to be directed to the said defendants, The Arizona Mutual Savings and Loan Association and The Arizona Trust Company, Sims Ely, as receiver of The Arizona Mutual Savings and Loan Association, and Sims Ely as receiver of The Arizona Trust Company, therein and thereby commanding them and each of them that within a certain time and under a certain penalty therein to be named, to be and appear before your Honor in this honorable court, then and there severally to answer all and singular the matters aforesaid, but not under oath, answer under oath being hereby expressly waived, and to stand to abide and perform such other and further orders or *decrees* to your Honor may seem meet.

ARTHUR A. KLINE,
Complainant.

THOS. ARMSTRONG, Jr.,
ERNEST W. LEWIS,
R. L. MORGAN,

Solicitors for Complainant, Whose Respective Addresses are 312-315 National Bank of Arizona Building, Phoenix, Arizona. [8]

State of Texas,

County of El Paso,—ss.

Arthur A. Kline, being first duly sworn upon his oath, deposes and says, that he is the complainant in the above-entitled cause, and affiant says that he has read the foregoing Bill of Complaint and knows the contents thereof; that the statements and allegations therein contained are true of his own knowledge, except as to matters therein alleged and stated upon information and belief, and as to those matters he believes it to be true.

ARTHUR A. KLINE,
Affiant and Complainant.

Subscribed and sworn to before me this the 6th day of July, A. D. 1914.

[Seal]

D. L. HILL,
Notary Public.

My commission expires May 31st, 1915.

[Endorsements]: In Equity, No. E-25. In the District Court of the United States for the District of Arizona. Arthur A. Kline, Complainant, vs. The Arizona Mutual Savings and Loan Association, a Corporation, The Arizona Trust Company, a Corporation, and Sims Ely, as Receiver of The Arizona Mutual Savings and Loan Association, and as Receiver of The Arizona Trust Company, Defendants. Bill of Complaint. Filed Jul. 13, 1914, at 11 A. M. George W. Lewis, Clerk. By R. E. L. Webb, Deputy. Thomas Armstrong, Jr., Ernest W. Lewis, R. L. Morgan, 314 National Bank of Arizona Bldg., Phoenix, Arizona, Solicitors for Complainant. [9]

[Subpoena Ad Respondendum.]

UNITED STATES OF AMERICA.

*District Court of the United States, District of
Arizona.*

IN EQUITY.

The President of the United States, Greeting: To
The Arizona Mutual Savings and Loan Association,
a Corporation, The Arizona Trust Company, a Corporation;
and Sims Ely, as Receiver of the Arizona Mutual Savings
and Loan Association, and as Receiver of The Arizona Trust
Company, Phoenix, Arizona.

YOU ARE HEREBY COMMANDED, That you
be and appear in said District Court of the United
States, District of Arizona, at the courtroom in
Phoenix, Arizona, twenty days from the date hereof,
to answer a Bill of Complaint exhibited against you
in said court by Arthur A. Kline, who is a citizen of
the City of El Paso, Texas, and to do and receive
what the said Court shall have considered in that be-
half.

WITNESS the Honorable WILLIAM H. SAW-
TELLE, Judge of said District Court, this 13th day
of July, in the year of our Lord one thousand nine
hundred and fourteen, and of our Independence the
139th.

[Seal]

GEORGE W. LEWIS,
Clerk.

By Robert E. L. Webb,
Deputy Clerk.

Memorandum Pursuant to Rule 12, Rules of Practice for the Courts of Equity of the United States.

YOU ARE HEREBY REQUIRED to file your answer or other defense in the above suit, on or before the twentieth day after service, excluding the day thereof, of this subpoena, at the clerk's office of said court, pursuant to said Bill: otherwise the said Bill may be taken *pro confesso*.

GEORGE W. LEWIS,
Clerk.

By Robert E. L. Webb,
Deputy Clerk. [10]

[Endorsed:] No. E—25. U. S. District Court, District of Arizona. In Equity. Arthur A. Kline, vs. The Arizona Mutual Savings & Loan Association, et al., Defts. Subpoena. Ad Respondendum. Filed Jul. 14, 1914, at — M. George W. Lewis, Clerk. By R. E. L. Webb, Deputy.

United States Marshal's Return.

Received this writ at Phoenix, Ariz., July 13, 1914, and executed the same July 13, 1914, at Phoenix, Arizona, as follows:

By delivering to and leaving with John T. Dunlap, Statutory Agent of the Arizona Mutual Savings and Loan Association, personally, a certified copy of this writ, together with a copy of the bill of complaint herein filed.

By delivering to and leaving with Lysander Cassity, Statutory Agent of the Arizona Trust Co., personally, a certified copy of this writ, together with a copy of the bill of complaint filed herein.

By delivering to and leaving with Sims Ely, as Receiver of the Arizona Mutual Savings & Loan Association, and to Sims Ely as Receiver of the Arizona Trust Co. personally, a certified copy of this writ, together with a copy of the bill of complaint filed herein.

Returned this 13th day of July, 1914.

J. P. DILLON,
U. S. Marshal,
By Chas. R. Price,
Deputy.

Marshal's fees for service, \$12.00.

*In the District Court of the United States for the
District of Arizona.*

IN EQUITY—E-25.

ARTHUR A. KLINE,

Complainant,

vs.

THE ARIZONA MUTUAL SAVINGS AND LOAN
ASSOCIATION, a Corporation; THE ARI-
ZONA TRUST COMPANY, a Corporation;
and SIMS ELY, as Receiver of THE ARI-
ZONA MUTUAL SAVINGS AND LOAN
ASSOCIATION, and as Receiver of THE
ARIZONA TRUST COMPANY,

Defendants.

Answer.

To the Honorable Judge of the United States District Court for the District of the State of Arizona:

The answer of Sims Ely, receiver of The Arizona Mutual Savings and Loan Association, a corporation and of The Arizona Trust Company, a corporation, to the bill of complaint filed in the above-entitled cause, respectfully represents and shows:

This defendant as receiver for said corporations reserving all manner of exceptions that may be had to the uncertainties and imperfections of the bill comes and answers thereto and says that he admits each and all of the allegations contained in paragraphs I and II of said bill except that plaintiff is now the owner of or entitled to the possession of the notes alleged in said paragraph II given by the Arizona Trust Company to secure the payment of said note of Five Thousand and Five Hundred Thirty-two and no/100 (\$5,532.00) Dollars in [11] said paragraph mentioned and with respect to this denial says that heretofore, to wit, on the 27th day of February, 1913, by a decree of the above-entitled court duly made and entered in the case of Charles W. Clark vs. The Arizona Mutual Savings and Loan Association, and The Arizona Trust Company, it was found and determined that at the time of the attempted transfer by The Arizona Mutual Savings and Loan Association to The Arizona Trust Company of the assets of said The Arizona Mutual Savings and Loan Association, including the assets in-

volved in this section, The Arizona Trust Company, defendant herein, had no right, power or authority to receive from said The Arizona Mutual Savings and Loan Association, any of said assets and that said attempted transfer was for the reasons set forth in said decree, void and of no effect.

That subsequent to the rendition of said decree by an order and modification thereof, duly made and entered in the above-entitled court on the 12th day of March, 1914, in said action wherein said Charles W. Clark is complainant and The Arizona Mutual Savings and Loan Association, and The Arizona Trust Company are defendants, it was further ordered, adjudged and decreed that said attempted transfer of said assets was and is void, and in accordance with the terms of both of said decrees, the receiver was directed to receive and report to the Master in Chancery of this court, all claims against either said The Arizona Mutual Savings and Loan Association or The Arizona Trust Company, whether said claims should arise through claim as creditor should arise through claim as stockholder or either of said companies. [12]

That pursuant to said decree of March 12th, 1914, Edwin F. Jones, Master in Chancery, has notified all creditors, stockholders and claimants to present their claims to him for allowance or disallowance, and defendant further represents and shows that the complainant, Arthur A. Kline is a claimant either as a creditor or stockholder of The Arizona Mutual Savings and Loan Association or of The Arizona Trust Company, and as such creditor or stockholder should

be compelled to present his claims for allowance or disallowance to said Master in Chancery before being permitted to litigate his claims to the assets involved in this proceeding.

That said assets being the subject of this cause of action, are, under the terms of each of said decrees hereinabove mentioned, assets properly belonging to The Arizona Mutual Savings and Loan Association, for the reason as hereinabove set forth, that the officers and directors of said Loan Association were without power, right or authority to transfer said assets to The Arizona Trust Company, and said The Arizona Trust Company at the time when it transferred and set over or attempted to transfer and set over said assets to the said Arthur A. Kline as a stockholder or creditor of The Arizona Trust Company, was without right, power or authority so to do.

Defendant further represents and shows that at the time of the attempted transfer by The Arizona Mutual Savings and Loan Association to said The Arizona Trust Company, and by said The Arizona Trust Company to the said Arthur A. Kline of the assets being the subject of this litigation, the said [13] Arthur A. Kline was a stockholder in The Arizona Mutual Savings and Loan Association, which Loan Association was by the terms of both decrees hereinabove *mention*, at the time of said attempted transfers adjudged and declared to be an insolvent association and that the said Arthur A. Kline and all persons holding under or through him or claiming any right, title or interest in said assets is subrogated to the rights which the said Arthur A.

Kline at the time of said transfer held, owned or enjoyed as a stockholder in said insolvent Loan Association.

WHEREFORE, defendant alleges that complainant, Arthur A. Kline, is not the owner of any of said securities or assets being the subject of this litigation, except in so far as it may be determined by the Master in Chancery hereinabove mentioned, he shall be the owner to the extent of his proportionate interest as a stockholder in the assets which may be marshalled and collected by the Master and Receiver of said insolvent Arizona Mutual Savings and Loan Association, and distributed to the stockholders therein.

SIMS ELY,
Receiver of The Arizona Mutual Savings and Loan
Association and The Arizona Trust Company.
GEORGE J. STONEMAN,
REESE M. LING,
Solicitors for Defendant, 405-6-7 Goodrich Blk.,
Phoenix, Arizona.

[Endorsements]: Equity—E-25. In the District Court of the United States for the District of Arizona. Arthur A. Kline, Complainant, vs. The Arizona Mutual Savings and Loan Association, etc., Defendants. Answer of Sims Ely, Receiver. Served with a Copy of the Within Answer this 31 day of August, 1914. Thos. Armstrong, Jr., Ernest W. Lewis, R. L. Morgan, Solicitors for Complainant. Filed Sep. 2, 1914, at — M. George W. Lewis, Clerk. By R. E. L. Webb, Deputy. [14]

[Plaintiff's Exhibit "A"—Note of Arizona Trust Co.]

No. ——. Phoenix, Arizona, March 2d, 1912.

On or before July 1st, 1912, after date, without grace, for value received, Arizona Trust Co. promises to pay to Arthur A. Kline or order the sum of Fifty-five hundred thirty-two and no/100 Dollars, with interest thereon at the rate of Eight per cent per annum from Date until paid. Interest payable at Maturity, and if not so paid to be added to the principal and become a part thereof, and to bear interest at the same rate; and should the interest not be paid when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note. Should suit be brought to recover on this note, said Company promises to pay as attorney's fees Five per Cent additional on amount found due on this note. Principal and interest payable in U. S. Gold Coin. All payable at The Valley Bank of Phoenix at Phoenix, Arizona.

ARIZONA TRUST COMPANY.

By A. J. EDWARDS,
Vice-president.

~~62858~~—10019.

\$5,532.00 100. Due July 1st, 1912.

ALF LE BARON,
Secy.

Note 93. The McNeil Co., Phoenix, Arizona.

[Endorsements]: Plffs. Ex. "A." in E-25, Kline vs. Ariz. Mut. Sav. & Loan Asso., et al. Admitted and Filed Jan. 22, 1915. George W. Lewis, Clerk.

[Plaintiff's Exhibit "B"—Agreement, March 2, 1912, Arizona Trust Company to Valley Bank of Phoenix.]

Phoenix, Arizona, March 2d, 1912.

To The Valley Bank of Phoenix,
Gentlemen:

We herewith hand you note of the Arizona Trust Company for the sum of Five Thousand Five Hundred and Thirty Two (\$5,532.00) Dollars, due on or before the first day of July, 1912, bearing interest at the rate of eight per cent (8%) per annum from date until paid, payable to Arthur A. Kline. And we also hand you notes secured by mortgages on real estate in Arizona, on which notes there is due an aggregate amount at this time, at least equal to the said sum of Five Thousand Five Hundred and Thirty Two (\$5,532.00) Dollars, said last-mentioned notes and mortgages to be held by you in escrow as collateral security for the payment of said note of Five Thousand Five Hundred and Thirty Two (\$5,532.00) Dollars, said collateral notes and mortgages to be by you returned to the Arizona Trust Company upon the payment of said note for Five Thousand Five Hundred and Thirty Two (\$5,532.00) Dollars, payable to the said Kline, and if said note be not paid when due, you are hereby authorized and directed to deliver said collateral notes and mortgages to secure the same to the said Kline or to his order, for his said security, or to proceed to sell the same as such security in the manner provided by law.

It is hereby mutually agreed by and between the Arizona Trust Company and the said Arthur A.

Kline, that any of said notes and mortgages may be withdrawn from said escrow by the substitution therefor of notes and mortgages of equal aggregate amount of the notes and mortgages so withdrawn, provided said substituted notes and mortgages shall be considered by the said Valley Bank as being of equal value of said notes and mortgages so withdrawn. [16]

As soon as you have examined said collateral notes and mortgages and approved the same as security for said note of Five Thousand Five Hundred and Thirty Two (\$5,532.00) Dollars, you will deliver to the Arizona Trust Company, stock certificate #1260 of the Arizona Mutual Savings and Loan Association, issued to Florine Kline for forty (40) shares of Class "A" stock of said Association, and stock certificate #1408 for twenty (20) shares of the stock of said Arizona Mutual Savings and Loan Association, originally issued to A. Kaplan, and thereafter, and on the 8th day of January, 1903, assigned to Arthur A. Kline, which said certificates are also herewith handed you, and upon approving said notes and mortgages you may deliver said note for Five Thousand Five Hundred and Thirty Two (\$5,532.00) Dollars to the said Kline, and hold said notes and mortgages as security therefor.

It is hereby agreed that if, at any time on or before the 15th day of March, 1912, the Arizona Trust Company desires to take up the said note for Five Thousand Five Hundred and Thirty Two (\$5,532.00) Dollars, with a discount of ten per cent (10%) thereon, the said note, with all of the collateral notes and mortgages as security therefor, shall be returned to the Arizona Trust Company, and the said debt can-

celled, upon the payment of said sum less ten per cent (10%).

IN WITNESS WHEREOF this instrument is executed in triplicate, this 2d day of March, 1912.

ARIZONA TRUST COMPANY.

[Ariz. Trust Co. Seal]

By A. J. EDWARDS,
Vice-president.

By ALF LE BARON,
ARTHUR A. KLINE.

Mar. 2, 1912.

Received the above papers for escrow.

THE VALLEY BANK OF PHOENIX,
LLOYD B. CHRISTY,
Cash. [17]

[Endorsements]: Plffs. Ex. "B." in E-25. Admitted and Filed Jan. 22, 1915. George W. Lewis, Clerk. [18]

[Plaintiff's Exhibit "C"—Letter, March, 1912, Valley Bank of Phoenix to Arthur H. Kline.]

THE VALLEY BANK.

Established 1883.

CAPITAL \$150,000.00.

(Picture of Valley Bank) E. J. Bennitt, President
Geo. M. Halm, Vice-Prest.
LLOYD B. CHRISTY, Cashier.

S. H. Stewart, Asst. Cashier

PHOENIX, ARIZONA.

March 6, 1912.

Mr. Arthur H. Kline,
El Paso, Texas.

Dear Sir:

Replying to your favor of the 5th will state that we

have already undertaken to find out the value of the notes that you and Mr. Edwards left here. As soon as I get that information I will then ask Mr. Edwards to let me know how much money has been paid on each of the mortgages and I will then be able to give you the information that you want.

Yours very truly,

THE VALLEY BANK OF PHOENIX,
LLOYD B. CHRISTY,
Cashier.

[Endorsements]: Plffs. Ex. "C" in E-25. Admitted and Filed Jan. 22, 1915. George W. Lewis, Clerk. [19]

**[Plaintiff's Exhibit "D"—Letter, April 29, 1912,
Valley Bank of Phoenix to Arthur H. Kline.]**

THE VALLEY BANK.

Established 1883.

CAPITAL \$150,000.00.

(Picture of
Valley Bank)

E. J. Bennitt, President
Geo. M. Halm, Vice-Prest.
Lloyd B. Christy, Cashier
S. H. Stewart, Asst. Cashier

PHOENIX, ARIZONA.

April 29, 1912.

Mr. Arthur H. Kline,
El Paso, Texas.

Dear Sir:

I am in receipt of your favor of the 27th about the note of \$5,532.00 of the Arizona Trust Company with collateral, left with us in escrow for your account.

I made inquiry as to the value of the collateral and found that it was not what you call gilt edge, but I

think it is absolutely good for the amount that it stands for.

We would not care to discount the note at this time as we have too many loans on hand ourselves.

Yours very truly,
THE VALLEY BANK OF PHOENIX,
LLOYD B. CHRISTY,
Cashier.

[Endorsements]: Plffs. Ex. "D" in E-25. Admitted and Filed Jan. 22, 1915. George W. Lewis, Clerk. [20]

[Plaintiff's Exhibit "E"—Note of Wardlop and Girodon et ux.]

Bisbee, Arizona, October 12th,

On or before the expiration of six years from the date hereof we promise to pay to the ARIZONA MUTUAL SAVINGS & LOAN ASSOCIATION, the sum of Fifteen hundred (\$1,500.00) dollars, being in repayment to said association of a loan for that amount made to us this day, with interest thereon at the rate of six per cent per annum, payable monthly, on the first day of each and every month hereafter; said loan is made to us as members of said Association, under, and subject to the provisions of its Articles of Incorporation and its By-laws, Rules, Regulations and Resolutions, all of which shall be deemed a part of this agreement to all intents and purposes as if written out in full herein, and to which we agree to conform.

We further agree to pay to said Association on the first day of each and every month during the time which this loan shall continue, the further sum of

Sixteen and 50/100 (\$16.50) dollars as premiums upon said loan; and we further agree to pay to said Association on the first day of each and every of said months, the further sum of Twenty-five and no/100 (\$25.00) dollars, being the monthly installments of the subscription price for fifty "A" shares of the Capital Stock of the said Association, for which we have subscribed; and we further agree to pay all the fines that may be assessed against us by said Association under its said Articles of Incorporation and By-laws, Rules, Regulations and Resolutions and in accordance with and subject to the conditions thereof.

Whenever the aggregate amount of the monthly installments of the subscription price of said stock paid hereunder and all earnings on said stock apportioned to us shall equal the amount of Five thousand (\$5,000.00) dollars, premiums, interest and fines made and imposed by and under the By-laws of said Association then this obligation shall be deemed to be paid and satisfied, and said stock to that extent be deemed cancelled. If the then paid up value of said stock shall exceed such loan, interest, premiums, fines, costs and other additions to the debt hereby secured, then such excess shall [21] be paid by said Association to said Theophile Wardlop and Andre Girodon, their heirs or assigns.

The payment and performance of this obligation is secured by a mortgage on real estate and is subject to the provisions contained in said mortgage.

All payments shall be made without notice or demand, at the office of said Association at Phoenix,

Arizona, or to the local Treasurer of said Association at Bisbee, Arizona.

THEOPHILE WARLOP.

EMMA GIRODON.

ANDRE GIRODON.

By EMMA GIRODON,

Atty. in Fact.

MARY WARLOP,

By THEOPHILE WARLOP,

Her Atty. in Fact.

[Endorsements]: No. 119. Real Estate Mortgage Note from Theophile Wardlop and Wife, Andre Girodon and Wife, Bisbee, Arizona. Amount—\$1,500.00. Dated October 12th, 1905. Arizona Mutual Savings & Loan Association. By J. L. Olsen, Secy. Arizona Trust Company. Plffs. Ex. "E." in E-25. Admitted and Filed Jan. 22, 1915. George W. Lewis, Clerk. [22]

\$500.00

No. 246.

[Plaintiff's Exhibit "F"—Note of Emmett W. Booker.]

Phoenix, Arizona, April 1st, 1910.

During One Hundred and Three (—103—) months after date, without grace, for value received, I, we, or either of us, promise to pay to the order of Arizona Mutual Savings and Loan Association, a corporation organized and existing under the laws of the Territory of Arizona, and to its successors and assigns, at their office in the City of Phoenix, Maricopa County, Arizona Territory, the sum of Five Hundred (\$500.00) Dollars, together with the further sum of Four Hundred Seventy Eight 50-100

(\$478.50) Dollars interest on said principal sum for and during said term. It is hereby agreed by the makers hereof that said principal and interest shall be paid in One Hundred and Three (103) monthly installments of Nine and 50-100 (\$9.50) Dollars each, payable on or before the 1st day of each and every month hereafter until said principal and interest shall be fully paid, and in default of payment of any monthly installment (principal and interest) when the same shall be due and payable the makers agree to pay the sum of Twenty Cents (\$0.20) Dollars per month (for each installment so in default) for each and every month that any such installment shall remain unpaid, as interest upon such delinquent installments.

At any time after twelve regular monthly payments have been made and at the expiration of any period of six months thereafter the maker hereof may repay one hundred dollars of the principal sum. Payment so made will reduce all succeeding monthly payments in proportion to such payment. If any monthly installment, principal or interest, required by this note shall remain unpaid for ten days after the same becomes due and payable, then the whole principal sum together with all monthly installments remaining unpaid as evidenced hereby may at once, without notice, become due and payable, at the option of the holder hereof.

If any payment required hereby is not paid when due, all costs of collection and an attorney's fee of Seventy Five (\$75.00) Dollars is collected by an attorney, foreclosure proceedings, sale or suit, shall be

paid to the holder in addition to the amount due and owing hereon.

It is hereby agreed by and between the makers, payee, endorsers, endorsees and holders hereof that this note is fully negotiable and that presentment and demand for payment, protest and notice of protest are hereby expressly waived.

This note is secured by a mortgage of even date herewith, made and executed by Emmett W. Booker, (Unmarried), to the said Arizona Mutual Savings and Loan Association.

EMMETT W. BOOKER. [23]

[Endorsements]: No. 246. Real Estate Mortgage Note from Emmett W. Booker. (Unmarried) Amt. \$500.00. Dated April 1st, 1910. Arizona Mutual Savings & Loan Association. By J. L. Olsen, Secy. Arizona Trust Company. Plffs. Ex. "F" in E-25 Admitted and Filed Jan. 22, 1915. George W. Lewis, Clerk. [24]

[Plaintiff's Exhibit "G"—Note of Smith et ux.]

This note has been paid in full by the undersigned, the present owner of the property described in a mortgage given by Earl E. Smith and Adelaide Smith to the Arizona Mutual Savings and Loan Association to secure this note recorded in Book 69 of Mortgages P. 558, Co. Rec. office, Maricopa County, Arizona and which mortgage has been satisfied of record by Sims Ely, Receiver. Elizabeth H. Smith. By Robt. E. Morrison, her Attorney.

\$400.00

No. 250

Phoenix, Arizona, August 1st 1910.

During One Hundred & Three (—103—) months after

date, without grace, for value received, I, we, or either of us, promise to pay to the order of Arizona Mutual Savings and Loan Association, a corporation organized and existing under the laws of the Territory of Arizona, and to its successors and assigns, at their office in the City of Phoenix, Maricopa County, Arizona Territory, the sum of Four hundred (\$400.00) Dollars, together with the further sum of Three hundred eighty two & 80/100- (\$382.80-) Dollars interest on said principal sum for and during said term. It is hereby agreed by the makers hereof that said principal and interest shall be paid in One Hundred Three (103) monthly installments of Seven and 60/100 (\$7.60) Dollars each, payable on or before the 1st day of each and every month hereafter until said principal and interest shall be fully paid, and in default of payment of any monthly installment (principal and interest) when the same shall be due and payable the makers agree to pay the sum of fifteen cents (\$0.15) Dollars per month (for each installment so in default) for each and every month that any such installment shall remain unpaid, as interest upon such delinquent installments.

At any time after twelve regular monthly payments have been made and at the expiration of any period of six months thereafter the maker hereof may repay one hundred dollars of the principal sum. Payment so made will reduce all succeeding monthly payments in proportion to such payment. If any monthly installment, principal or interest, required by this note shall remain unpaid for ten days after the same becomes due and payable, then the whole

principal sum together with all monthly installments remaining unpaid as evidenced hereby may at once, without notice, become due and payable, at the option of the holder hereof.

If any payment required hereby is not paid when due, all costs of collection and an attorney's fee of Seventy-five (\$75.00) Dollars if collected by an attorney, foreclosure proceedings, sale or suit, shall be paid to the holder in addition to the amount due and owing hereon.

It is hereby agreed by and between the makers, payee, endorsers, endorsees and holders hereof that this note is fully negotiable and that presentment and demand for payment, protest and notice of protest are hereby expressly waived.

This note is secured by a mortgage of even date herewith, made and executed by Earl E. Smith and Adelaide Smith, husband and wife, to the said Arizona Mutual Savings and Loan Association.

EARL E. SMITH.

ADELAIDE SMITH. [25]

[Endorsements]: No. 250. Real Estate Mortgage Note from Earl E. Smith and Adelaide Smith, husband and wife. Amt. \$400.00. Dated August 1st, 1910. Arizona Mutual Savings & Loan Association. By J. L. Olsen, Secy. Arizona Trust Company. Plffs. Ex. "G" in E-25. Admitted and Filed Jan. 22, 1915. George W. Lewis, Clerk. [26]

Plaintiff's Exhibit "H" [Note of Jennings et ux.]
\$800.00 No. 253.

Phoenix, Arizona, September 1st, 1910.

During One Hundred & Three (-103-) months after date, without grace, for value received, I, we, or either of us, promise to pay to the order of Arizona Mutual Savings and Loan Association, a corporation organized and existing under the laws of the Territory of Arizona, and to its successors and assigns, at their office in the City of Phoenix, Maricopa County, Arizona Territory, the sum of Eight Hundred (\$800.00) Dollars, together with the further sum of Seven Hundred Sixty-five & 60-100 (\$765.60) Dollars interest on said principal sum for and during said term. It is hereby agreed by the makers hereof that said principal and interest shall be paid in One Hundred and Three (103) monthly installments of Fifteen and 20-100 (\$15.20) Dollars each, payable on or before the 1st day of each and every month hereafter until said principal and interest shall be fully paid, and in default of payment of any monthly installment (principal and interest) when the same shall be due and payable the makers agree to pay the sum of thirty cents (\$0.30) Dollars per month (for each installment so in default) for each and every month that any such installment shall remain unpaid, as interest upon such delinquent installments.

At any time after twelve regular monthly payments have been made and at the expiration of any period of six months thereafter the maker hereof may repay one hundred dollars of the principal sum.

Payment so made will reduce all succeeding monthly payments in proportion to such payment. If any monthly installment, principal or interest, required by this note shall remain unpaid for ten days after the same becomes due and payable, then the whole principal sum together with all monthly installments remaining unpaid as evidenced hereby may at once, without notice, become due and payable, at the option of the holder hereof.

If any payment required hereby is not paid when due, all costs of collection and an attorney's fee of Eighty (\$80.00) Dollars if collected by an attorney, foreclosure proceedings, sale or suit, shall be paid to the holder in addition to the amount due and owing hereon.

It is hereby agreed by and between the makers, payee, endorsers, endorsees and holders hereof that this note is fully negotiable and that presentment and demand for payment, protest and notice of protest are hereby expressly waived.

This note is secured by a mortgage of even date herewith, made and executed by Oscar W. Jennings and Emma B. Jennings, husband and wife, to the said Arizona Mutual Savings and Loan Association.

OSCAR W. JENNINGS.

EMMA B. JENNINGS. [27]

Endorsements: No. 253. Real Estate Mortgage Note from Oscar W. Jennings and Emma B. Jennings, his wife. Amt. \$800.00 dated September 1st, 1910. Arizona Mutual Savings & Loan Association by J. L. Olsen, Secy. Arizona Trust Company. Plffs. Ex. "H" in E-25. Admitted and Filed Jan. 22, 1915. George W. Lewis, Clerk. [28]

[Plaintiff's Exhibit "I"—Note of Alger et ux.]

\$600.00

No. 258

Phoenix, Arizona, October 1st. 1910.

During One Hundred & Three (-103-) months after date, without grace, for value received, I we, or either of us, promise to pay to the order of Arizona Mutual Savings and Loan Association, a corporation organized and existing under the laws of the Territory of Arizona, and to its successors and assigns, at their office in the city of Phoenix, Maricopa County, Arizona Territory, the sum of SIX HUNDRED (\$600.00) Dollars, together with the further sum of Five hundred seventy four & 20/100 (\$574.20) Dollars interest on said principal sum for and during said term. It is hereby agreed by the makers hereof that said principal and interest shall be paid in ONE HUNDRED AND THREE (103) monthly installments of Eleven & 40/100 (\$11.40) Dollars each, payable on or before the 1st day of each and every month hereafter until said principal and interest shall be fully paid, and in default of payment of any monthly installment (principal and interest) when the same shall be due and payable the makers agree to pay the sum of Twenty five cents, (\$0.25) Dollars per month (for each installment so in default) for each and every month that any such installment shall remain unpaid, as interest upon such delinquent installments.

At any time after twelve regular monthly payments have been made and at the expiration of any period of six months thereafter the maker hereof may repay one hundred dollars of the principal sum.

Payment so made will reduce all succeeding monthly payments in proportion to such payment. If any monthly installment, principal or interest, required by this note shall remain unpaid for ten days after the same becomes due and payable, then the whole principal sum together with all monthly installments remaining unpaid as evidenced hereby may at once, without notice, become due and payable, at the option of the holder hereof.

If any payment required hereby is not paid when due, all costs of collection and an attorney's fee of Seventy Five (\$75.00) Dollars if collected by an attorney, foreclosure proceedings, sale or suit, shall be paid to the holder in addition to the amount due and owing hereon.

It is hereby agreed by and between the makers, payee, endorsers, endorsees and holders hereof that this note is fully negotiable and that presentment and demand for payment, protest and notice of protest are hereby expressly waived.

This note is secured by a mortgage of even date herewith, made and executed by Thomas G. Alger and Sarah P. Alger, husband and wife, to the said Arizona Mutual Savings and Loan Association.

THOMAS G. ALGER.

SARAH P. ALGER.

Witness.

J. T. OWENS. [29]

[Endorsements]: No. 258. Real Estate Mortgage Note from Thomas P. Alger and Sarah P. Alger. Amt. \$600.00. Dated October 1st, 1910. Arizona Mutual Savings & Loan Association. By J. L. Olsen,

Secy. Arizona Trust Company. Plffs. Ex. "I" in E-25. Admitted and Filed Jan. 22, 1915. George W. Lewis, Clerk. [30]

**[Plaintiff's Exhibit "J"—Note of Phoenix
Construction & Supply Co.]**

\$2000.00

No. 261

Phoenix, Arizona, November 25th, 1910.

During One Hundred & Three (103) months after date, without grace, for value received, I, we, or either of us, promise to pay to the order of Arizona Mutual Savings and Loan Association a corporation organized and existing under the laws of the Territory of Arizona, and to its successors and assigns, at their office — in the City of Phoenix, Maricopa County Arizona Territory, the sum of TWO THOUSAND, (\$2000.00) Dollars, together with the further sum of NINETEEN HUNDRED & FOURTEEN, (\$1914.00) Dollars interest on said principal sum for and during said term. It is hereby agreed by the makers hereof that said principal and interest shall be paid in ONE HUNDRED & THREE (103) monthly installments of THIRTY EIGHT, (\$38.00) Dollars each, payable on or before the 1st day of each and every month hereafter until said principal and interest shall be fully paid, and in default of payment of any monthly installment (principal and interest) when the same shall be due and payable the makers agree to pay the sum of Eighty Cents (\$0.80) Dollars per month (for each installment so in default) for each and every month that any such in-

installment shall remain unpaid, as interest upon such delinquent installments.

At any time after twelve regular monthly payments have been made and at the expiration of any period of six months thereafter the maker hereof may repay one hundred dollars of the principal sum. Payment so made will reduce all succeeding monthly payments in proportion to such payment. If any monthly installment, principal or interest, required by this note shall remain unpaid for ten days after the same becomes due and payable, then the whole principal sum together with all monthly installments remaining unpaid as evidenced hereby may at once, without notice, become due and payable, at the option of the holder hereof.

If any payment required hereby is not paid when due, all costs of collection and an attorney's fee of ONE HUNDRED & FIFTY (\$150.00) Dollars if collected by an attorney, foreclosure proceedings, sale or suit, shall be paid to the holder in addition to the amount due and owing hereon.

It is hereby agreed by and between the makers, payees, endorsers, endorsees and holders hereof that this note is fully negotiable and that presentment and demand for payment, protest and notice of protest are hereby expressly waived.

This note is secured by a mortgage of even date herewith, made and executed by PHOENIX CONSTRUCTION & SUPPLY COMPANY (a Cor-

poration) to the said Arizona Mutual Savings and Loan Association.

PHOENIX CONSTRUCTION AND SUPPLY COMPANY,

By N. R. CHRISTMAN,
Vice-President.

E. B. ZACHRY,
Treasurer.

[Seal] Attest:

E. B. ZACHRY,
Secretary. [31]

[Endorsements]: No. 261. Real Estate Mortgage Note from Phoenix Construction & Supply Co., (a Corp.) Amt. \$2,000.00 Dated November 25th, 1910. Arizona Mutual Savings & Loan Association. By J. L. Olsen, Secy. Arizona Trust Company. Plffs. Ex. "J" in E-25. Admitted and Filed Jan. 22, 1915. George W. Lewis, Clerk. [32]

[Plaintiff's Exhibit "K"—Letter, June 17, 1911, Arizona Mutual Savings & Loan Assn. to A. A. Kline.]

R. H. Brooks, Treasurer.

W. W. McNeff, President.

F. L. Blumer, Manager.

W. M. Fickas, Vice-President.

A. J. Edwards, Attorney.

LeRoy H. Civile, Secretary.

Alf. B. Le Baron, Field Manager.

ARIZONA MUTUAL SAVINGS & LOAN ASSN.

6/19

Lock Box 605.

Phoenix, Arizona, June 17th, 1911.

Mr. A. A. Kline,

El Paso, Texas.

Dear Sir:

Replying to your favor of June 7th, which should have been answered earlier, but for the fact that I have been so busy since elected to the office of secre-

tary less than a month ago, on account of the former secretary being called East, owing to illness in the family, and without sufficient time to explain everything in the office to me, beg to say that if some officer of the Association has informed you or anyone else that Class "A" stock held by you is withdrawable or matured at this time, it was evidently under a misapprehension of the facts.

An examination of the stock account of Mrs. Florine Kline indicates that it will mature about the first of January, and probably be worth a little more than par and your twenty shares would be so nearly matured that the stockholders meeting might vote to permit its withdrawal, if you desire to do so.

The value at the present time of certificate #1408 is \$1647.99. The value of certificate #1260 is \$3674.02, but they are not withdrawable at present. However, any payments that are made in the future, will be credited and the earnings of the same, of course, credited, and if it amounts to more than par at the time the dividend credits causes maturity, you will be paid the excess just the same.

Hoping you will find this satisfactory, and assuring you of our best endeavors in the matter for the benefit of all stockholders we beg to remain,

Yours very truly,

ARIZONA MUTUAL SAVINGS & LOAN
ASSN.

LEROY H. CIVILLE,

Secretary.

Dict.—FGK.

[Endorsements]: Plffs. Ex. "K" in E-25. Admitted and Filed Jan. 22, 1915. George W. Lewis, Clerk.[33]

Plaintiff's Exhibit "L"—[Letter, July 12, 1911, Arizona and Mutual Savings & Loan Assn. to A. A. Kline.]

R. H. Brooks, Treasurer.

W. W. McNeff, President.

F. L. Blumer, Manager.

W. M. Fickas, Vice-President.

A. J. Edwards, Attorney.

LeRoy H. Civile, Secretary.

Alf. B. Le Baron, Field Manager.

ARIZONA MUTUAL SAVINGS & LOAN ASSN.

Lock Box 605.

Phoenix, Arizona, July 12th, 1911.

Mr. Arthur A. Kline,

El Paso, Texas.

Dear Sir:

Replying to your favor of the 3rd. inst. would say that our records show that you have made payments including the month of June. Any notice that was sent you must have been an error, caused by the fact that we have been so busy in the office recently that we have been unable to keep up with the work promptly.

Referring to your letter of June 19th, and your mention of the same in your letter of July 3rd, would say that the writer was new in the office at the time that letter was received and desired to consult with some of the other officers who were out of town at the time. The letter was mislaid, hence the delay in answering.

You ask whether advance payments could be made on certificates #1260 and #1408 and in reply have to say that I am advised that this cannot be done.

The advance payments, of course, could be made and when the annual meeting is held in January and dividends are portioned, the payments will draw their proportion of dividends and enhance the value of your stock, but, at the same time, you can understand that paying in money at this time and withdrawing it immediately would be of no service to the association, and it would simply be a matter of book keeping to withdraw stock which is not at present withdrawable. No officer of the company would have any authority to make any change in the situation. There will be no trouble, however, about your getting the money on these certificates in January, but I see no way of getting it before that time.

I regret that we have delayed answering your letter and trust it has not caused you any inconvenience.

Yours very truly,
ARIZONA MUTUAL SAVINGS & LOAN
ASSN.

LEROY H. CIVILLE,
Secretary.

Dict.

AJE/GLF.

[Endorsements]: Plffs. Ex. "L" in E-25. Admitted and filed Jan. 22, 1915. George W. Lewis, Clerk. [34]

[Plaintiff's Exhibit "O"—Note and Collateral Notes
in Escrow.]

NOTE AND COLLATERAL NOTES IN ESCROW
NO. 508.

From Arthur A. Kline, El Paso (hereinafter
called the first party), to Arizona Trust Co. (here-
inafter called the second party).

Total Consideration, \$5532 and int.

To THE VALLEY BANK,
Phoenix, Arizona.

This Envelope is deposited with you in Escrow, sub-
ject to the following

INSTRUCTIONS.

The within papers are to be delivered to the above
designated second party, its order or assigns, upon
demand, if said second party, its agent or assigns,
shall deposit with you for the credit and use of the
above designated first party, the full amount of the
total consideration hereinabove written; the time
and terms of payment being as follows, to wit:

1st	Payment to be made on or before 7-1.....	1912	\$5532
2nd	" " " " " " "	19..	\$....
with interest @ 8 % from 3/2-12			
3rd	" " " " " " "	19..	\$....
4th	" " " " " " "	19..	\$....
5th	" " " " " " "	19..	\$....
6th	" " " " " " "	19..	\$....
7th	" " " " " " "	19..	\$....
8th	" " " " " " "	19..	\$....
9th	" " " " " " "	19..	\$....
10th	" " " " " " "	19..	\$....

But if said payments or any of them are not made
at the times and in the amounts hereinabove stated,

you will accept no further payments and deliver enclosed papers to

.....
or order, on demand, time being of the essence of these instructions:

You are hereby released from any and all liability and claim or claims whatsoever in connection with receiving, retaining and delivering the same, except that in case any payment is made hereon, as above stated, you will credit as per above instructions, less your charge of \$1.00 per \$1000.00 of the amounts so paid, together with the amount, if any, paid by you for legal expenses connected herewith, which amount you are hereby authorized to deduct and hold out.

These charges, in addition to the charge for filing and indexing required at the time papers are deposited, being the minimum as fixed by the Associated Banks of Phoenix.

Dated at Phoenix, Ariz, A. D. 19..

Filed and indexed Mar. 16, 1912.

(.....
(.....
(.....
(.....

Received the within papers this — day of
—, 19—.

FEE
For Filing and
Indexing, \$2.00

Papers inclosed
sent Mr. Kline via
Mail by Cashier
9-17-12

[Endorsements]: Aug. 8-12. Pd. interest \$200,-
00. Plffs. Ex. "O" in #E-25. Admitted and filed
Jan. 23, 1915. George W. Lewis, Clerk. [36]

[Minutes of Hearing, January 22, 1915.]

*United States District Court for the District of
Arizona.*

Minute Entry Appearing Under Date of January
22d, 1915.

No. E-25.

ARTHUR A. KLINE,

Plaintiff,

vs.

THE ARIZONA MUTUAL SAVINGS AND LOAN
ASSOCIATION, et al.,

Defendants.

This cause came on regularly for hearing before the Court on this day, the plaintiff appearing in person and by Messrs, Armstrong & Lewis, Esquires, his attorneys, and the defendant by Sims Ely, receiver, appearing in person and by George J. Stoneman, Esquire, his attorney. The complaint of the plaintiff is read by his attorney and the answer of Sims Ely, receiver, of the Arizona Mutual Savings

and Loan Association and the Arizona Trust Company, is read by counsel. H. R. Person is duly sworn as court reporter in this case. Plaintiff offers in evidence exhibits "A," "B," "C," "D," "E," "F," "G," "H," "I" and "J," which are admitted and filed. Arthur A. Kline is called as a witness upon behalf of the plaintiff, duly sworn, examined and cross-examined. Plaintiff offers in evidence exhibits "K" and "L," which are admitted and "M," and "N," which are excluded and filed. Thereupon, the plaintiff rests its case.

Upon the stipulation and misunderstanding made and had in open court that the decrees made by this Court on February 27, 1913, and March 12, 1914, in the case of Clark vs. Arizona Mutual Savings and Loan Association et al., shall be considered as offered in evidence in this case, subject to the objections thereto on behalf of the plaintiff set out in the reporter's transcript of the evidence herein, the defendants rest their case. The hour of adjournment having arrived and the trial of this case not [37] being complete, IT IS ORDERED that the further trial hereof be and the same is hereby adjourned and continued until 9:30 o'clock A. M., on Saturday, the 23d day of January, A. D. 1915. [38]

[Minutes of Hearing, January 23, 1915.]

*United States District Court for the District of
Arizona.*

Minute Entry Appearing Under Date of January
23d, 1915.

No. E-25.

ARTHUR A KLINE,

Plaintiff,

vs.

ARIZONA MUTUAL SAVINGS AND LOAN
ASSOCIATION, et al.,

Defts.

Trial of this case is this day resumed pursuant to an order or adjournment made on yesterday, plaintiff being represented by Messrs. Armstrong & Lewis, Esquires, his attorneys, and the defendants by George J. Stoneman, Esquire, their attorney, and Sims Ely, receiver, being present in open court. Plaintiff's Exhibit "O," offered in evidence, is admitted and filed under stipulation as set out in the testimony. Thereupon, plaintiff rests its case and the defendants rests its case. The testimony being closed and no further evidence offered, argument is had by counsel for the plaintiff; and the defendants thereupon ask leave to present arguments upon behalf of the defendants in the form of written brief to be delivered to the Court at a future date, and leave is so granted by the Court. The plaintiff thereupon asks leave to file a reply in writ-

ing to the defendants' brief and leave to file the same is accordingly granted by the Court. [39]

*In the District Court of the United States for the
District of Arizona.*

IN EQUITY—No. E-25.

ARTHUR A KLINE,

Complainant,

vs.

THE ARIZONA MUTUAL SAVINGS AND LOAN
ASSOCIATION, a Corporation; THE ARI-
ZONA TRUST COMPANY, a Corporation;
and SIMS ELY, as Receiver of the Arizona
Mutual Savings and Loan Association, and as
Receiver of the Arizona Trust Company,
Defendants.

Decree.

This cause, having come on regularly for hearing in the above-entitled court, on the 23d day of January, 1915, plaintiff being present in court in person and by his counsel, Messrs. E. W. Lewis and Thomas Armstrong, Jr., and defendants represented by Sims Ely, receiver, being present in court in person and by his counsel, George J. Stoneman, and oral and documentary evidence having been introduced by plaintiff in support of the allegations of his Bill of Complaint, and oral and documentary evidence having been submitted by defendant, Sims Ely, in support of the allegations contained in his answer thereto; and argument having been had and said

cause having been continued by order of this Court from term to term; and this Court being now fully advised in the premises;

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED, that complainant, Arthur A. Kline, take nothing by this action and that he is not the owner of, nor entitled to possession of any of the securities or assets being the subject of this litigation, except in so far as it may be determined by the Master in Chancery appointed in equity cause No. 53; that the said Arthur A. Kline shall be the owner of stock, [40] either in The Arizona Trust Company or The Arizona Mutual Savings & Loan Association, to which extent complainant shall be entitled to his proportionate interest as such stockholder in any of the assets of either of said corporations which may be marshalled and collected by the Master appointed in said equity cause No. 53 and Sims Ely, receiver.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendants and Sims Ely, receiver, do have and recover from plaintiff their costs in this behalf established, \$9.20.

WM. H. SAWTELLE,
Judge.

Dated at Phoenix, Arizona, October 4th, 1915.

[Endorsements]: In Equity—No. E-25. In the District Court of the United States for the District of Arizona. Arthur A. Kline, Complainant, vs. The Arizona Mutual Savings and Loan Association, a Corporation; The Arizona Trust Company, a Corporation; and Sims Ely, as Receiver of the Arizona

Mutual Savings and Loan Association, and as Receiver of the Arizona Trust Company, Defendants. Decree. Filed Oct, 4, 1915. George W. Lewis, Clerk. [41]

[Order Admitting Certain Decrees in Evidence.]

*United States District Court for the District of
Arizona.*

Minute Entries Appearing Under Date of October
4th, 1915.

No. E—25.

ARTHUR A KLINE,

Plaintiff,

vs.

ARIZONA MUTUAL SAVINGS AND LOAN
ASSOCIATION, et al.,

Defendants.

IT IS ORDERED by the Court that the decrees made and entered by this Court on February 27, 1913, and March 12, 1914, in the case of Charles W. Clark vs. Arizona Mutual Savings and Loan Association, et al., in Equity No. 53 (Phoenix), be and the same are hereby admitted in evidence over the objections of the plaintiff, set out in the reporter's transcript of the evidence herein, to which ruling and action of the Court the plaintiff then and there excepts and asks that such exception be noted upon the records and the same is accordingly done by the clerk.

[Order Entering Exception to Decree, etc.]

No. E—25.

ARTHUR A. KLINE,

Plaintiff,

vs.

ARIZONA MUTUAL SAVINGS AND LOAN
ASSOCIATION, et al.,

Defendants.

A decree having been this day entered by the Court in favor of the defendants herein and the plaintiff, by counsel, having excepted to the decree and order of the Court entering judgment in favor of the defendants herein and asked that such exception be noted upon the record, IT IS ORDERED that said exception be and the same is hereby entered. [42]

[Order Allowing Appeal and Fixing Amount of Bond.]*United States District Court for the District of
Arizona.*Minute Entry Appearing Under Date of October
29th, 1915.

No. E—25 (Phoenix).

ARTHUR A KLINE,

Plaintiff,

vs.

ARIZONA MUTUAL SAVINGS AND LOAN
ASSOCIATION et al.,

Defendants.

Comes now the plaintiff by his attorney and gives notice, in open court, of an appeal from the decision of this Court to the United States Circuit Court of Appeals for the Ninth Circuit and files his Assignment of Errors; and thereupon,

IT IS ORDERED by the Court that the appeal be allowed and that the cost bond of the plaintiff on appeal be, and the same is, hereby fixed in the sum of Five Hundred and no/100 (\$500.00) Dollars, conditioned according to law and to be approved by the clerk of this court. [43]

[Stipulation Continuing Stipulation in Force and Effect Until Decision by Circuit Court of Appeals.]

United States District Court for the District of Arizona.

Minute Entries Appearing Under Date of October 29th, 1915.

No. E—25.

ARTHUR A. KLINE,

Plaintiff,

vs.

ARIZONA MUTUAL SAVINGS AND LOAN ASSOCIATION et al.,

Defendants.

It is stipulated by counsel in open court, E. W. Lewis, Esquire, appearing upon behalf of the plaintiff, and George J. Stoneman, Esquire, appearing upon behalf of the defendants, that the stipulation

on file herein shall continue in full force and effect until this case shall be decided by the Circuit Court of Appeals of the United States for the Ninth Circuit.

**[Order That U. S. District Court Stand at Recess
Until January 10, 1916.]**

IT IS ORDERED that the United States District Court for the District of Arizona do now stand at recess until Monday, the 10th day of January, A. D. 1916, at the hour of ten o'clock A. M. [44]

*In the District Court of the United States for the
District of Arizona.*

IN EQUITY—No. E-25 (Phoenix).

ARTHUR A. KLINE,

Complainant and Appellant,

vs.

ARIZONA MUTUAL SAVINGS & LOAN ASSOCIATION et al.,

Defendants and Appellees.

Assignments of Error.

Comes now the above-named appellant, Arthur A. Kline, by his solicitors, Thomas Armstrong, Jr., Ernest W. Lewis and R. L. Morgan, and says that in the record and proceedings in the above-entitled cause in the District Court of the United States for the District of Arizona there is manifest error in this, to wit:

I.

That the Court erred in admitting in evidence the decree entered in the above-entitled court in the case

of Charles W. Clark versus the Arizona Mutual Savings & Loan Association et al., dated February 27, 1913, and the decree entered in said court on the 12th day of March, 1914, in said last-mentioned action, wherein said court did decree that at the time of the transfer by the Arizona Mutual Savings & Loan Association to the Arizona Trust Company of the assets of the said Arizona Mutual Savings & Loan Association, including the assets the subject of litigation herein, the Arizona Trust Company had no right, power or authority to receive from said Arizona Mutual Savings & Loan Association any of said assets and that said attempted [45] transfer was void and of no effect, over the objections of complainant and appellant duly entered of record in said cause, to wit:

“We object to the competency and relevancy of the judgments themselves upon the ground that Arthur A. Kline was not a party to said litigation and that his interest, if any he had, initiated prior to the institution of the suit of Clark versus the Arizona Mutual Savings & Loan Association, et al., and, therefore, we are not bound by any decree which may be rendered in the Clerk Litigation”;

to which ruling admitting said judgments the complainant and appellant then and there excepted, which exception was noted of record.

II.

The District Court erred in holding that the judgments entered by said Court in the said cause of Charles W. Clark, complainant, versus the Arizona Mutual Savings & Loan Association, et al., defend-

ants, wherein it was decreed that the transfer of the assets of the Arizona Mutual Savings & Loan Association to the Arizona Trust Company was void, determined and established as against the complainant and appellant herein, he not being a party to said litigation and his rights, if any, having initiated prior to the institution of said cause of Clark versus the Arizona Mutual Savings & Loan Association, et al., that the Arizona Trust Company had no title to the collateral pledged to this complainant and that therefore this complainant had no right to the possession of said collateral as against the receiver, Sims Ely, appointed in said cause of Clark, versus the Arizona Mutual Savings & Loan Association, et al.

III.

Said District Court erred in holding and decreeing that the complainant, Arthur A. Kline, take nothing by his said action and that he is not the owner nor entitled to the possession [46] of any of the securities or assets, the subject of this litigation, of the reason that all of the competent evidence introduced upon the trial of said cause shows that said Arthur A. Kline, on or about March 2, 1912, and more than five months prior to the institution of the cause of Charles W. Clark versus the Arizona Mutual Savings & Loan Association, et al., sold to the Arizona Trust Company stock in the Arizona Mutual Savings & Loan Association and in consideration therefor received of and from the Arizona Trust Company its certain promissory note due on or before July 1, 1912, in the sum of Five Thousand Five Hundred and Thirty-two Dollars (\$5,532.00) with

interest and attorneys fees, which note was and is unpaid, and that at the time of the execution and delivery of said note and to secure the payment thereof the said Arizona Trust Company endorsed in blank and delivered to the Valley Bank in pledge for the use of the said Arthur A. Kline certain negotiable promissory notes secured by mortgages on real estate in Arizona, as follows:

No.				
119	E. E. Wardlop,	Bisbee,	\$1,500.00	\$1,500.00
246	E. W. Booker,	Globe,	500.00	500.00
250	E. E. Smith, et al.,	Wickenburg,	339.25	400.00
253	O. W. Jennings, et al.,	"	688.00	800.00
268	Thos. P. Alger,	Safford,	564.00	600.00
261	Phoenix Construction Co.,	Phoenix,	1,982.00	2,000.00
			<hr/>	<hr/>
			\$5,573.25	\$5,800.00

and that at the time of the pledging of said notes to the said Arthur A. Kline, each and all of said promissory notes, save and except No. 119, E. E. Wardlop, were unmatured and were in the actual possession of the said Arizona Trust Company and endorsed in blank by the Arizona Mutual Savings & Loan Association, and that at that time said Kline was entitled to rely upon and did rely upon such plenary evidence of title in said Arizona Trust Company, and by virtue of the pledge aforesaid did become entitled to the possession thereof until said principal note was paid. [47]

IV.

The District Court erred in holding that as to the unmatured notes pledged to said Kline said Kline was not an innocent holder in due course for value.

V.

The District Court erred in holding that said Kline

take nothing by his said action and that he is not the owner of nor entitled to the possession of any of the securities or assets being the subject of said litigation, for the reason that the undisputed competent evidence in said cause shows that the said Arizona Mutual Savings & Loan Association clothed the Arizona Trust Company with apparent title to the collateral the subject of this litigation, and placed said trust company in possession thereof and thereby gave the said Arizona Trust Company the opportunity to pledge said collateral to said Kline he being an innocent purchaser, for value, thereby estopping the said Arizona Mutual Savings & Loan Association and its said receiver, Sims Ely, from claiming said collateral as against the said Kline until the payment of the note to secure which said collateral was pledged.

VI.

The District Court erred in holding that said Kline was not an innocent purchaser of said collateral for value.

VII.

The District Court erred in holding that said Kline had any notice or knowledge of the insolvency of the said Arizona Mutual Savings & Loan Association or defect in the title of the Arizona Trust Company to said collateral, at the time of the pledging of said collateral.

VIII.

The District Court erred in entered judgment in favor of the defendants herein, said judgment being contrary to the law and the competent evidence in the case. [48]

IX.

The District Court erred in not rendering judgment in favor of the appellant in accordance with the prayer of the bill.

WHEREFORE, appellant prays that the judgment and decision of the District Court of the United States for the District of Arizona in this cause be reversed and that said Court be directed to enter said judgment of reversal, and that appellant recover his costs herein and have such other orders and relief in the premises as may be just.

THOS. ARMSTRONG, Jr.,
ERNEST W. LEWIS,
R. L. MORGAN,

Solicitors for Appellant.

[Endorsements]: In the District Court of the United States for the District of Arizona. Arthur A. Kline, Complainant and Appellant, vs. Arizona Mutual Savings & Loan Association, et al., Defendants and Appellee. In Equity—No. E-6 Phoenix. Assignments of Error. Filed Oct. 29, 1915. George W. Lewis, Clerk. [49]

*In the District Court of the United States for the
District of Arizona.*

IN EQUITY—No. E-25 (Phoenix).

ARTHUR A. KLINE,

Complainant and Appellant,

vs.

THE ARIZONA MUTUAL SAVINGS AND
LOAN ASSOCIATION, a Corporation, et al.,
Defendants and Appellees.

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS, That we, Arthur A. Kline, as principal, and the United States Fidelity and Guaranty Company of Baltimore, Maryland, as surety, are held and firmly bound unto The Arizona Mutual Savings and Loan Association, a corporation; The Arizona Trust Company, a corporation; and Sims Ely, as receiver of the Arizona Mutual Savings and Loan Association, and as receiver of the Arizona Trust Company, the defendants in the above-entitled cause, in the sum of Five Hundred Dollars (\$500.00) lawful money of the United States, to be paid to them and their respective successors; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally firmly by these presents.

Executed this the 30th day of October, 1915.

WHEREAS, the above-named complainant and appellant, Arthur A. Kline is prosecuting an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, sitting at the City of San Francisco, California, to reverse the decree of [50] the District Court of the United States for the District of Arizona, in the above-entitled cause,

NOW, THEREFORE, the condition of this obligation is such that if the above-named complainant and appellant, Arthur A. Kline, shall prosecute his said appeal to effect and answer all costs if he fail to make good his plea, then this obligation shall be void,

otherwise to remain in full force and effect.

ARTHUR A. KLINE,

Principal,

UNITED STATES FIDELITY & GUAR-
ANTY CO.,

[Seal]

By JOHN J. SWENEY,

Its Attorney in Fact,

By EARL S. CURTIS,

Its Attorney in Fact,

Surety.

The foregoing bond is approved this 30th day of
October, 1915.

GEORGE W. LEWIS,

Clerk of the District Court of the United States for
the District of Arizona.

By R. E. L. Webb,

Deputy.

[Endorsements]: In the District Court of the
United States for the District of Arizona. Arthur
A. Kline, Complainant, vs. The Arizona Mutual Sav-
ings & Loan Association, a Corporation, et al., De-
fendants. In Equity—No. E-25, Phoenix. Bond
on Appeal. Thos. Armstrong, Jr., Ernest W. Lewis,
R. L. Morgan, Solicitors for Complainant and Ap-
pellant, 310-315 Nat'l Bank of Ariz. Bldg, Phoenix,
Arizona. Filed Oct. 30, 1915, at — M. George W.
Lewis, Clerk. By R. E. L. Webb, Deputy. [51]

*In the District Court of the United States for the
District of Arizona, Phoenix Side.*

IN EQUITY—No 25.

ARTHUR A. KLINE,

Complainant and Appellant,

vs.

THE ARIZONA MUTUAL SAVINGS AND
LOAN ASSOCIATION, a Corporation, et al.,
Defendants and Appellees.

**Order [Enlarging Appellant's Time to December 29,
1915, to Docket Case and File Record Thereof
in U. S. Circuit Court of Appeals].**

Good and sufficient cause having been first shown to this Court that the time allowed by Rule 16 of the Rules of the United States Circuit Court of Appeals for the Ninth Circuit in which the appellant has to Docket his case and file the record thereof on appeal with the clerk of the court of said Circuit at San Francisco, California, ought to be enlarged and extended thirty days from November 29th, 1915.

IT IS THEREFORE ORDERED, That the time in which the appellant in the above-entitled case has under said rule 16 to docket his case and file the record thereof with said clerk on appeal, be, and the same is hereby enlarged and extended thirty days from the 29th day of November, 1915.

Dated this the 24 day of November, A. D. 1915.

WM. H. SAWTELLE,

Judge. [52]

[Endorsements]: No. E-25. In the United States District Court for the District of Arizona. Arthur A. Kline, Plaintiff, vs. Arizona Mutual Savings & Loan Association, a Corporation, et al., Defendants. Order. Filed November 24, 1915. George W. Lewis, Clerk. By Effie D. Botts, Deputy. [53]

*In the United States District Court for the District
of Arizona.*

IN EQUITY—No. E-25 (Phoenix).

ARTHUR A. KLINE,

Plaintiff,

vs.

THE ARIZONA MUTUAL SAVINGS AND
LOAN ASSOCIATION, a Corporation, et al.,
Defendants.

**Certificate of Clerk of United States District Court
to Transcript of Record.**

United States of America,
District of Arizona,—ss.

I, George W. Lewis, Clerk of the United States District Court for the District of Arizona, do hereby certify the fifty-three (53) typewritten pages, number from one (1) to fifty-three (53), inclusive, to be a full, true, correct and complete copy of so much of the record, papers, and other proceedings in the above and foregoing entitled cause as are necessary to the hearing of said cause, and as is stipulated for by counsel of record herein, as the same remain of record on file in

the office of the clerk of said district court, and that the same constitute the record on appeal from the judgment of said United States District Court for the District of Arizona, to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify the following to be full, true and correct statement of all expenses, costs, fees and charges incurred and paid in my office by or on behalf of the plaintiff for the preparation and certification of the typewritten transcript of record issued to the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause, to wit:

[54]

Clerk's fee (Sec. 828 R. S. U. S. as Amended by Sec. 6, Act of March 2, 1905), for mak- ing typewritten transcript of record— 193 folios at 30¢ per folio.....	\$57.90
Certificate of clerk to typewritten transcript of record, 4 folios.....	1.20
Seal to said certificate.....	.40
	<hr/>
	59.50

I hereby certiy that the above cost for preparing and certifying record, amounting to \$59.50, has been paid to me by Ernest W. Lewis, Esquire, one of counsel for the plaintiff herein.

I further certify that I hereto attach and herewith transmit the original Waiver of Citation and Statement of the Evidence in this cause.

WITNESS my hand and the Seal of said District

Court, affixed this 27th day of November, A. D., 1915,
at Phoenix, Arizona.

[Seal]

GEORGE W. LEWIS,
Clerk.

By R. E. L. Webb.
Deputy Clerk. [55]

*In the District Court of the United States for the
District of Arizona, Phoenix Side.*

IN EQUITY—No. E-25.

ARTHUR A. KLINE,
Complainant and Appellant,
vs.

THE ARIZONA MUTUAL SAVINGS AND
LOAN ASSOCIATION, a Corporation, et al.,
Defendants and Appellees.

Waiver of Citation.

Come now the defendants and appellees, in the above-entitled suit, by their solicitor, George J. Stoneman, and hereby expressly waive the issuance of a citation herein, and service thereof, of this an appeal by the appellant herein to the United States Circuit Court of Appeals of the Ninth Circuit, sitting at the City of San Francisco, California, and the appellees hereby agree to enter their appearance to said appeal without the service of a citation on them or either of them.

Dated this the 3d day of November, 1915.

GEORGE J. STONEMAN,
Solicitor for the Defendants and Appellees Here-
in. [56]

[Endorsed]: In Equity—No. 25. In the District Court of the United States for the District of Arizona, Phoenix Side. Arthur A. Kline, Complainant and Appellant, vs. The Arizona Mutual Savings & Loan Association, et al., Defendants and Appellees. Waiver of Citation. Filed Nov. 3, 1915, at — M. George W. Lewis, Clerk. By R. E. L. Webb, Deputy. [57]

*In the District Court of the United States, for the
District of Arizona.*

IN EQUITY—No. E-25 (Phoenix).

ARTHUR A. KLINE,

Complainant and Appellant,

vs.

THE ARIZONA MUTUAL SAVINGS AND
LOAN ASSOCIATION, a Corporation et al.,
Defendants and Appellees.

Statement of the Evidence.

Be it remembered that the above-entitled cause came on regularly to be heard in the above-entitled court before the Honorable William H. Sawtelle, Judge, this 22d day of January, 1915, at 2:00 o'clock P. M. The plaintiff was present in court and represented by his solicitor, Ernest W. Lewis, and the defendants by their solicitor, George J. Stoneman. Thereupon the following proceedings were had:

[Proceedings had January 22, 1915.]

Plaintiff's Case.

The plaintiff offered the note of the Arizona Trust Company, dated March 2, 1912, in favor of A. A.

Kline for \$5,532 with interest and other conditions as therein stated, which note was admitted in evidence and marked as Plaintiff's Exhibit "A," and which is in words and figures following, to wit:

"Phoenix, Arizona, March 2nd, 1912.

No. —

On or before July 1st, 1912, after date, without grace, for value received, Arizona Trust Co. promises to pay to Arthur A. Kline or order the sum of Fifty-five hundred thirty-two and no/100 Dollars, with interest thereon at the rate of Eight per cent per annum from Date until paid. Interest payable at maturity, and if not so paid to be added to the principal and become a part thereof, and to bear interest at the same rate; [58] and should the interest not be paid when due then the whole sum of principal and interest shall become immediately due and payable, at the option of the holder of this note. Should suit be brought to recover on this note, said Company promises to pay as attorney's fees Five per cent additional on amount found due on this note. Principal and interest payable in U. S. Gold Coin. All payable at the Valley Bank of Phoenix at Phoenix, Arizona.

ARIZONA TRUST COMPANY,

By A. J. EDWARDS,

Vice-President.

ALF C. LE BARON,

Secy.

\$5,532.00. Due July 1st, 1912."

Plaintiff offered the instructions to the Valley Bank signed by the Arizona Trust Company and

Arthur A. Kline, under date of March 2, 1912, which was received and marked as Plaintiff's Exhibit "B," which instructions are as follows, to wit:

"Phoenix, Arizona, March 2d, 1912.

To the Valley Bank of Phoenix,
Gentlemen:

We herewith hand you note of the Arizona Trust Company for the sum of Five Thousand Five Hundred and Thirty Two Dollars (\$5,532.00), due on or before the first day of July, 1912, bearing interest at the rate of eight per cent (8%) per annum from date until paid, payable to Arthur A. Kline, and we also hand you notes secured by mortgages on real estate in Arizona, on which notes there is due an aggregate amount at this time, at least equal to the said sum of Five Thousand Five Hundred and Thirty Two (\$5,532.00) Dollars, said last mentioned notes and mortgages to be held by you in escrow as collateral security for the payment of said note of Five Thousand Five Hundred and Thirty-two (\$5,532.00) Dollars, said collateral notes and mortgages to be by you returned to the Arizona Trust Company upon the payment of said note for Five Thousand Five Hundred and Thirty Two (\$5,532.00) Dollars, payable to the said Kline, and if said note be not paid when due, you are hereby authorized and directed to deliver said collateral notes and mortgages to secure the same to the said Kline or to his order, for his said security, or to proceed to sell the same as such security in the manner provided by law.

It is hereby mutually agreed by and between the Arizona Trust Company and the said Arthur A.

Kline, that any of said notes and mortgages may be withdrawn from said escrow by the substitution therefor, of notes and mortgages of equal aggregate amount of the notes and mortgages so withdrawn, provided said substituted notes and mortgages shall be considered by the said Valley Bank as being of equal value of said notes and mortgages so withdrawn.

As soon as you have examined said collateral notes and mortgages and approved the same as security for said note of Five Thousand Five Hundred and Thirty Two (\$5,532.00) Dollars, you will deliver to the Arizona Trust Company, stock certificate #1260 of the Arizona Mutual Savings and Loan Association issued to Florine Kline for Forty (40) shares of Class 'A' stock of said Association, and stock certificate #1408 for [59] twenty (20) shares of the stock of said Arizona Mutual Savings and Loan Association, originally issued to A. Kaplan, and thereafter, and on the 8th day of January, 1903, assigned to Arthur A. Kline, which said certificates are also herewith handed you, and upon approving said notes and mortgages you may deliver said note for Five Thousand Five Hundred and Thirty-two (\$5,532.00) Dollars to the said Kline, and hold said notes and mortgages as security therefor.

It is hereby agreed that if, at any time on or before the 15th day of March, 1912, the Arizona Trust Company desires to take up the said note for Five Thousand Five Hundred and Thirty-two (\$5,532.00) Dollars, with a discount of ten per cent (10%) thereon, the said note, with all of the collateral notes and mortgages as security therefor, shall be returned

to the Arizona Trust Company, and the said debt cancelled upon the payment of said sum less ten per cent (10%).

IN WITNESS WHEREOF this instrument is executed in triplicate this 2nd day of March, 1912.

[Corporate Seal]

ARIZONA TRUST COMPANY.

By A. J. EDWARDS,

Vice-president,

By ALF. C. LE BARON,

Secretary.

ARTHUR A. KLINE.

Mar. 2, 1912.

Received the above papers for escrow.

THE VALLEY BANK OF PHOENIX,

LLOYD B. CHRISTY,

Cash."

The plaintiff offered a letter of The Valley Bank of Phoenix under date of March 6, 1912, to Arthur A. Kline in pursuance to the above escrow instructions contained in exhibit "B," which letter was received in evidence and marked as Plaintiff's Exhibit "C," and which is as follows, to wit:

"(Letter-head of The Valley Bank.)

Phoenix, Arizona, March 6, 1912.

Mr. Arthur A. Kline,

El Paso, Texas.

Dear Sir:

Replying to your favor of the 5th will state that we have already undertaken to find out the value of the notes that you and Mr. Edwards left here. As soon as I get that information I will then ask Mr.

Edwards to let me know how much money has been paid on each of the mortgages and I will then be able to give you the information that you want.

Yours very truly,

THE VALLEY BANK OF PHOENIX,
LLOYD B. CHRISTY,

Cashier."

Plaintiff offered a letter of the Valley Bank of Phoenix under date of April 29, 1912, which was received in evidence [60] and marked Plaintiff's Exhibit "D," which letter is as follows to wit:

"(Letter-head of The Valley Bank.)

Phoenix, Arizona, April 29, 1912.

Mr. Arthur A. Kline,

El Paso, Texas.

Dear Sir:

I am in receipt of your favor of the 27th about the note of \$5,532.00 of the Arizona Trust Company with collateral, left with us in escrow for your account.

I made inquiry as to the value of the collateral and found that it was not what you would call gilt edge, but I think it is absolutely good for the amount that it stands for.

We would not care to discount the note at this time as we have too many loans on hand ourselves.

Yours very truly,

THE VALLEY BANK OF PHOENIX,
LLOYD B. CHRISTY,

Cashier."

Plaintiff offered in evidence Note No. 119, E. E. Wardlop of Bisbee, together with the mortgage securing the same, which is one of the notes and

mortgages deposited as collateral security under the letter of instructions, together with the endorsements upon the note, which were received in evidence and marked Plaintiff's Exhibit "E," and which note is in words and figures as follows, to wit:

"Bisbee, Arizona, October 12th, 1905.

On or before the expiration of six years from the date hereof we promise to pay to the Arizona Mutual Savings & Loan Association, the sum of fifteen hundred (\$1500.00) dollars, being in repayment to said Association of a loan for that amount made to us this day, with interest thereon at the rate of six per cent per annum, payable monthly, on the first day of each and every month hereafter; said loan is made to us as members of said Association, under, and subject to the provisions of its Articles of Incorporation and its By-laws, Rules, Regulations and Resolutions all of which shall be deemed a part of this agreement to all intents and purposes as if written out in full herein, and to which we agree to conform.

We further agree to pay to said Association on the first day of each and every month during the time which this loan shall continue, the further sum of Sixteen and 50/100 (\$16.50) Dollars as premiums upon said loan; and we further agree to pay to said Association on the first day of each and every of said months, the further sum of Twenty-five and no/100 (\$25.00) dollars, being the monthly installments of the subscription price for fifty 'A' shares of the Capital Stock of the said Association, for which we have subscribed; and we further agree to pay all the fines that may be assessed against us by said [61] Asso-

ciation under its said Articles of Incorporation and By-laws, Rules, Regulations and Resolutions and in accordance with the subject to the conditions thereof.

Whenever the aggregate amount of the monthly installments of the subscription price of said stock paid hereunder and all earnings on said stock apportioned to us shall equal the amount of Five Thousand (\$5,000.00) dollars, premiums, interest and fines made and imposed by and under the By-laws of said Association then this obligation shall be deemed to be paid and satisfied, and said stock to that extent be deemed cancelled. If the then paid up value of said stock shall exceed such loan, interest, premiums, fines, costs and other additions to the debt hereby secured, then such excess shall be paid by said Association to said Theophile Wardlop and Andre Girodon, their heirs or assigns.

The payment and performance of this obligation is secured by a mortgage on real estate and is subject to the provisions contained in said mortgage.

All payments shall be made without notice or demand, at the office of said Association at Phoenix, Arizona, or to the local Treasurer of said Association at Bisbee, Arizona.

THEOPHILE WARDLOP.

EMMA GIRODON.

ANDRE GIRODON.

By EMMA GIRODON,

Atty. in Fact.

MARY WARDLOP,

By THEOPHILE WARDLOP,

Her Atty. in Fact.

[Endorsed]: No. 119. Real Estate Mortgage Note from Theophile Wardlop and Wife; Andre Girodon and Wife, Bisbee, Arizona. Amount—\$1,500.00. Dated October 12th, 1905. Arizona Mutual Savings & Loan Association. By J. L. Olsen, Secy. Arizona Trust Company.”

(Real estate mortgages omitted by consent of parties.)

By Mr. STONEMAN.—May I ask, for the purpose of determining whether I want to make an objection, when this note was received by plaintiff in this case?

By Mr. LEWIS.—Subsequent to September 17, 1912. It was received by the Valley Bank as agent for him March 2, 1912.

By Mr. STONEMAN.—The defendant objects to the introduction of this note upon the grounds, first, that it appears from the note that the note was taken by the plaintiff after maturity. Upon the further ground that it is inadmissible for the purpose of proving or disproving any of the issues properly involved in this case; and for the additional reason that to now permit the assignee or any note given to the Arizona Mutual Savings and Loan Association, or assigned by the Arizona Mutual by a stockholder of that company, would be to prefer such stockholder to be given a preference over other stockholders in the Arizona Mutual Savings and Loan Association, or the Arizona Trust Company, both of which companies have been declared by a decree of this court to be insolvent, and the determination of the distribution of the assets is now pending on appeal. I

want to be understood as saying this; we make [62] the general objection to the introduction of all of these notes upon the ground that the one who purchases the notes of either of these trust companies,—either of the Trust Company or of the Loan Association, such notes having been given by a stockholder of either of the companies, is subrogated to the right which said stockholder had in either of the companies, and that if either of the companies became insolvent, such stockholder had the right only to participate in the assets which may be marshalled for distribution to creditors and stockholders, and cannot be permitted, by assignment of the indebtedness, to be paid in full to the exclusion of others.

By the COURT.—The evidence will be received. I will reserve my ruling. That same objection goes to all of these notes and mortgages?

By Mr. STONEMAN.—Yes, if your Honor please; excepting the Wardlop note, which is the only one past due.

By Mr. STONEMAN.—May I ask that the record show that there is no advantage taken to the fact that special objection is not made to each of these notes, and that the same objection may go to all of these notes to save repeating?

By Mr. LEWIS.—Yes, we have no objection to that course being pursued.

Plaintiff offered note of Emmett W. Booker, No. 246, together with the endorsements thereon, and the real estate mortgage securing the same, which were received in evidence and marked Plaintiff's Exhibit "F," which note is in words and figures as follows, to wit:

“\$500.00.

No. 246.

Phoenix, Arizona, April 1st, 1910.

During one hundred and three (103) months after date, without grace, for value received, I, we or either of us, promise to pay to the order of Arizona Mutual Savings and Loan Association, a corporation organized and existing under the laws of the Territory of Arizona, and to its successors and assigns, at their office in the city of Phoenix, Maricopa County, Arizona Territory, the sum of Five Hundred (\$500.00) Dollars, together with the further sum of Four Hundred Seventy-eight 50/100 (\$478.50) Dollars interest on said principal sum for and during said term. It is hereby agreed by the makers hereof that said principal and interest shall be paid in one [63] hundred and three (103) monthly installments of Nine and 50/100 (\$9.50) Dollars each, payable on or before the 1st day of each and every month hereafter until said principal and interest shall be fully paid, and in default of payment of any monthly installment (principal and interest) when the same shall be due and payable the makers agree to pay the sum of twenty cents (\$0.20) per month (for each installment so in default) for each and every month that any such installment shall remain unpaid as interest upon such delinquent installments.

At any time after twelve regular monthly payments have been made and at the expiration of any period of six months thereafter the maker hereof may repay one hundred dollars of the principal sum. Payment so made will reduce all succeeding monthly payments in proportion to such payment. If any

monthly installment, principal or interest, required by this note shall remain unpaid for ten days after the same becomes due and payable, then the whole principal sum together with all monthly installments remaining unpaid as evidenced hereby may at once, without notice, become due and payable, at the option of the holder hereof.

If any payment required hereby is not paid when due, all costs of collection and an attorney's fee of Seventy-five (\$75.00) Dollars if collected by an attorney, foreclosure proceedings, sale or suit, shall be paid to the holder in addition to the amount due and owing hereon.

It is hereby agreed by and between the makers, payee, endorsers, endorsees and holders hereof that this note is fully negotiable and that presentment and demand for payment, protest and notice of protest are hereby expressly waived.

This note is secured by a mortgage of even date herewith, made and executed by Emmett W. Booker, (unmarried) to the said Arizona Mutual Savings and Loan Association.

(Sgd.) EMMETT W. BOOKER."

[Endorsed]: "No. 246. Real Estate Mortgage Note, from Emmett W. Bocker (Unmarried). Amt. \$500.00. Dated April 1st, 1910. Arizona Mutual Savings & Loan Association. By J. L. Olsen, Secy. Arizona Trust Company."

(Copy of real estate mortgage securing above note omitted by consent of counsel.)

Plaintiff offered Note No. 250, Earl E. Smith, together with the endorsements thereon, which was re-

ceived in evidence and marked as Plaintiff's Exhibit "G," said note being in words and figures as follows, to wit:

\$400.00.

No. 250.

Phoenix, Arizona, August 1st, 1910.

During One hundred three (103) months after date without grace, for value received, I, we, or either of us promise to pay to the order of Arizona Mutual Savings and Loan Association a corporation organized and existing under the laws of the Territory of Arizona and to its successors and assigns, at their office in the City of Phoenix, Maricopa County, Arizona Territory, the sum of Four Hundred (\$400.00) Dollars, together with the further sum of Three Hundred eighty-two and 80/100 (\$382.80) Dollars interest on said principal sum for and during said term. It is hereby agreed by the makers hereof that said [64] principal and interest shall be paid in one hundred three (103) monthly installments of Seven and 60/100 (\$7.60) dollars each, payable on or before the 1st day of each and every month hereafter until said principal and interest shall be fully paid, and in default of payment of any monthly installment (principal and interest) when the same shall be due and payable the makers agree to pay the sum of fifteen cents (\$0.15) per month (for each installment so in default) for each and every month that any such installment shall remain unpaid, as interest upon such delinquent installments.

At any time after twelve regular monthly payments have been made and at the expiration of any period of six months thereafter the maker hereof

may repay one hundred dollars of the principal sum. Payments so made will reduce all succeeding monthly payments in proportion to such payment. If any monthly installment, principal or interest, required by this note shall remain unpaid for ten days after the same becomes due and payable then the whole principal sum together with all monthly installments remaining unpaid as evidenced hereby may at once, without notice, become due and payable, at the option of the holder hereof.

If any payment required hereby is not paid when due, all costs of collection and an attorney's fee of Seventy-five (\$75.00) Dollars, if collected by an attorney, foreclosure proceedings, sale or suit, shall be paid to the holder in addition to the amount due and owing hereon.

It is hereby agreed by and between the makers, payee, endorsers, endorsees and holders hereof that this note is fully negotiable and that presentment and demand for payment, protest and notice of protest are hereby expressly waived.

This note is secured by a mortgage of even date herewith made and executed by Earl E. Smith and Adelaide Smith, husband and wife, to the said Arizona Mutual Savings and Loan Association.

EARL E. SMITH.

ADELAIDE E. SMITH,

This note has been paid in full by the undersigned the present owner of the property described in a mortgage given by Earl E. Smith and Adelaide Smith to the Arizona Mutual Savings and Loan Association to secure this note, recorded in Book 69 of

mortgages, p. 558, Co. Rec. Office, Maricopa County, Arizona, and which mortgage has been satisfied of record by Sims Ely, Receiver.

ELIZABETH H. SMITH,

By ROBT. E. MORRISON,

Her Attorney.

[Endorsed]: "No. 250. Real Estate Mortgage Note from Earl E. Smith and Adelaide Smith, husband and wife, Amt. \$400.00. Dated August 1st, 1910. Arizona Mutual Savings & Loan Association. By J. L. Olsen, Secy. Arizona Trust Company."

(The real estate mortgage securing the above note is omitted by consent of counsel.)

Plaintiff offered Note No. 253 of Oscar W. Jennings and Emma B. Jennings his wife, together with the endorsements thereon and the real estate mortgage securing the same, which were received in evidence and marked as Plaintiff's Exhibit "H" which note is in words and figures following, to wit: [65]

"\$800.00

No. 253.

Phoenix, Arizona, September, 1st, 1910.

During one hundred and three (103) months after date, without grace, for value received, I, we or either of us, promise to pay to the order of Arizona Mutual Savings and Loan Association, a corporation organized and existing under the laws of the Territory of Arizona, and to its successors and assigns, at their office in the City of Phoenix, Maricopa County, Territory of Arizona, the sum of Eight Hundred (\$800.00) Dollars together with the further sum of Seven Hundred Sixty Five & 60/100 (\$765.60) Dollars interest on said principal sum for

and during said term. It is hereby agreed by the makers hereof that said principal and interest shall be paid in one hundred and three (103) monthly installments of fifteen and 20/100 (\$15.20) Dollars each, payable on or before the 1st day of each and every month hereafter until said principal and interest shall be fully paid, and in default of payment of any monthly installment (principal and interest) when the same shall be due and payable the makers agree to pay the sum of Thirty cents (\$.30) per month (for each installment so in default) for each and every month that any such installment shall remain unpaid, as interest upon such delinquent installments.

At any time after twelve regular monthly payments have been made and at the expiration of any period of six months thereafter the maker hereof may repay one hundred dollars of the principal sum. Payment so made will reduce all succeeding monthly payments in proportion to such payment. If any monthly installment, principal or interest, required by this note shall remain unpaid for ten days after the same becomes due and payable, then the whole principal sum together with all monthly installments remaining unpaid as evidenced hereby may at once, without notice, become due and payable, at the option of the holder hereof.

If any payment required hereby is not paid when due, all costs of collection and an attorney's fee of Eighty (\$80.00) Dollars if collected by an attorney, foreclosure proceedings, sale or suit, shall be paid to the holder in addition to the amount due and owing hereon.

It is hereby agreed by and between the makers, payee, endorsers, endorsees and holders hereof, that this note is fully negotiable and that presentment and demand for payment, protest and notice of protest are hereby expressly waived.

This note is secured by a mortgage of even date herewith, made and executed by Oscar W. Jennings and Emma B. Jennings, husband and wife, to the said Arizona Mutual Savings and Loan Association.

OSCAR W. JENNINGS,
EMMA B. JENNINGS.”

[Endorsed]: “No. 253. Real Estate Mortgage Note, from Oscar W. Jennings and Emma B. Jennings his Wife. Amt. \$800.00. Dated September 1st, 1910. Arizona Mutual Savings & Loan Association. By J. L. Olsen. Arizona Trust Company.”

(Copy of real estate mortgage securing the foregoing note is omitted by consent of counsel.)

Plaintiff offered Note No. 258 of Thos. G. Alger and Sarah P. Alger, his wife, together with the endorsements thereon and the mortgage securing the same, which were received in evidence and marked Plaintiff's Exhibit “I,” and a copy of which [66] note is as follows:

“\$600.00.

No. 258.

Phoenix, Arizona, October 1st, 1910.

During one hundred and three (103) months after date, without grace, for value received, I, we or either of us, promise to pay to the order of Arizona Mutual Savings and Loan Association, a corporation organized and existing under the laws of the Territory of Arizona, and to its successors and assigns,

at their office in the City of Phoenix, Maricopa County, Arizona Territory, the sum of Six Hundred (\$600.00) Dollars, together with the further sum of Five Hundred seventy-four & 20/100 (\$574.20) Dollars interest on said principal sum for and during said term. It is hereby agreed by the makers hereof that said principal and interest shall be paid in one hundred and three (103) monthly installments of eleven & 40/100 (\$11.40) Dollars each, payable on or before the 1st day of each and every month hereafter until said principal and interest shall be fully paid, and in default of payment of any monthly installment (principal and interest) when the same shall be due and payable the makers agree to pay the sum of Twenty-five cents (\$0.25) per month (for each installment so in default) for each and every month that any such installment shall remain unpaid, as interest upon such delinquent installments.

At any time after twelve regular monthly payments have been made and at the expiration of any period of six months thereafter the maker hereof may repay one hundred dollars of the principal sum. Payment so made will reduce all succeeding monthly payments in proportion to such payment, if any monthly installment, principal or interest, required by this note shall remain unpaid for ten days after the same becomes due and payable, then the whole principal sum together with all monthly installments remaining unpaid as evidenced hereby may at once, without notice, become due and payable, at the option of the holder hereof.

If any payment required hereby is not paid when

due, all costs of collection and an attorney's fee of Seventy-five (\$75.00) Dollars if collected by an attorney, foreclosure proceedings, sale or suit, shall be paid to the holder in addition to the amount due and owing hereon. .

It is hereby agreed by and between the makers, payee, endorsers, endorsees and holders hereof that this note is fully negotiable and that presentment and demand for payment protest and notice of protest are hereby expressly waived.

This note is secured by a mortgage of even date herewith made and executed by Thomas G. Alger and Sarah P. Alger, husband and wife, to the said Arizona Mutual Savings and Loan Association.

THOMAS G. ALGER,
SARAH P. ALGER.

Witness:

J. T. Owen."

[Endorsed] : "No. 258. Real Estate Mortgage Note from Thomas P. Alger and Sarah P. Alger. Amt. \$600.00. Dated October 1st, 1910. Arizona Mutual Savings & Loan Association, by J. L. Olsen, Secy. Arizona Trust Company."

(Copy of mortgage securing above note is omitted by consent of counsel.) [67]

Plaintiff offered Note No. 261 of the Phoenix Construction and Supply Company, together with the endorsements thereon and the mortgage securing the same, which were admitted in evidence and marked as Plaintiff's exhibit "J," which note is in words and figures as follows, to wit:

“\$2000.00.

No. 261.

Phoenix, Arizona, November 25th, 1910.

During one hundred and three (103) months after date, without grace, for value received, I, we or either of us, promise to pay to the order of Arizona Mutual Savings and Loan Association, a corporation organized and existing under the laws of the Territory of Arizona, and to its successors and assigns at their office in the City of Phoenix, Maricopa County, Arizona Territory, the sum of Two Thousand (\$2,000.00) Dollars, together with the further sum of Nineteen Hundred & Fourteen (\$1914.00) Dollars interest on said principal sum for and during said term. It is hereby agreed by the makers hereof that said principal and interest shall be paid in one hundred & three (103) monthly installments of Thirty-eight (\$38.00) Dollars each, payable on or before the 1st day of each and every month thereafter until said principal and interest shall be fully paid, and in default of payment of any monthly installment (principal and interest) when the same shall be due and payable, the makers agree to pay the sum of eighty cents (\$0.80) Dollars per month (for each installment so in default) for each and every month that any such installment shall remain unpaid, as interest upon such delinquent installments.

At any time after twelve regular monthly payments have been made and at the expiration of any period of six months thereafter the maker hereof may repay one hundred dollars of the principal sum. Payment so made will reduce all succeeding monthly payments in proportion to such payment. If any monthly installment, principal or interest, required

by this note shall remain unpaid for ten days after the same becomes due and payable, then the whole principal sum together with all monthly installments remaining unpaid as evidenced hereby may at once, without notice, become due and payable, at the option of the holder hereof.

If any payment required hereby is not paid when due, all costs of collection and an attorney's fee of One Hundred & Fifty (\$150.00) Dollars if collected by an attorney, foreclosure proceedings, sale or suit shall be paid to the holder in addition to the amount due and owing hereon.

It is hereby agreed by and between the makers, payee, endorsers, endorsees and holders hereof that this note is fully negotiable and that presentment and demand for payment, protest and notice of protest are hereby expressly waived.

This note is secured by a mortgage of even date herewith made and executed by Phoenix Construction & Supply Company(a corporation) to the said Arizona Mutual Savings and Loan Association.

[Corporate Seal]

PHOENIX CONSTRUCTION AND SUPPLY COMPANY.

By N. R. CHRISTMAN,
Vice-president.

E. B. ZACHRY,
Treasurer.

Attest:

E. B. ZACHRY,
Secretary.

[Endorsed]: "No. 261. Real Estate Mortgage Note from Phoenix Construction and Supply Co. (a

Corp.). Amt. \$2,000.00. Dated November 25th, 1910. Arizona Mutual Savings & Loan Association. By J. L. Olsen, Secy. Arizona Trust Company.

(Copy of Mortgage omitted by consent of counsel.)
[68]

By Mr. LEWIS.—Mr. Stoneman, will you admit the fact that the stock No. 1250 of the Arizona Mutual Savings and Loan Association issued to Florine Kline for 40 shares of Class “A” stock of said Association and stock certificate No. 1408 for 20 shares of stock of the Arizona Mutual, originally issued to A. Kaplin, and thereafter on the 8th day of January, 1913, assigned to A. A. Kline, which certificates are described in the letter of instructions to the Valley Bank introduced as exhibit “B” were delivered to the Arizona Trust Company?

By Mr. STONEMAN.—Yes, that is admitted.

**[Testimony of Arthur A. Kline, the Complainant, in
His Own Behalf.]**

ARTHUR A. KLINE was thereupon called as a witness in his own behalf, and being first duly sworn, testified as follows:

Direct Examination by Mr. LEWIS.

My name is A. A. Kline. I reside at El Paso, Texas. I am the plaintiff in this action.

Letter from Arizona Mutual Savings & Loan Association dated July 17, 1911, received by Mr. Kline from said Association offered and received in evidence as Plaintiff's Exhibit “K,” which letter is as follows, to wit:

“(Letter-head Arizona Mutual Savings & Loan Association.)

Phoenix, Arizona, June 17th, 1911.

Mr. A. A. Kline,
El Paso, Texas.

Dear Sir:

Replying to your favor of June 7th which should have been answered earlier but for the fact that I have been so busy since elected to the office of Secretary less than a month ago, on account of the former Secretary being called East owing to illness in the family and without sufficient time to explain everything in the office to me, beg to say that if some officer of the association ever informed you or anyone else that Class “A” stock held by you is withdrawable or matured at this time, it was evidently under a misapprehension of the [69] facts.

An examination of the stock account of Mrs. Florine Kline indicates that it will mature about the first of January and probably be worth a little more than par and your twenty shares would be so nearly matured that the stockholders’ meeting might vote to permit its withdrawal, if you desire to do so.

The value at the present time of Certificate #1408 is \$1647.99. The value of Certificate #1260 is \$3,674.02, but they are not withdrawable at present, However, any payments that are made in the future, will be credited and the earnings of the same, of course, credited, and if it amounts to more than par at the time the dividends credits causes maturity, you will be paid the excess just the same.

*Hoping you will find this satisfactory, and assur-

ing you of our best endeavors in the matter for the benefit of all stockholders, we beg to remain,

Yours very truly,

ARIZONA MUTUAL SAVINGS & LOAN
ASSN.

LERROY H. CIVILLE,
Secretary.

Dict. FGK."

By the COURT.—Had the stock matured at that time?

By Mr. LEWIS.—That is the purport of the letter, that it would mature at that time, January, 1912. It was simply explanatory of how Mr. Kline came to Phoenix.

By the COURT.—I understand. In the meantime did the association become insolvent?

By Mr. LEWIS.—No. If your Honor please.

Letter from the Arizona Mutual Savings & Loan Association dated July 12, 1911, offered and received in evidence and marked Plaintiff's Exhibit "L," which letter is as follows, to wit:

“(Letter-head Arizona Mutual Savings & Loan
Association.)

Phoenix, Arizona, July 12, 1911.

Mr. Arthur A. Kline,
El Paso, Texas.

Dear Sir:

Replying to your favor of the 3rd inst. would say that our records show that you have made payments including the month of June. Any notice that was sent you must have been an error, caused by the fact that we have been so busy in the office recently

that we have been unable to keep up with the work properly.

Referring to your letter of June 19th and your mention of the same in your letter of July 3rd, would say that the writer was new in the office at the time that letter was received and desired to consult with some of the other officers who were out of town at the time. The letter was mislaid, hence the delay in answering.

You ask whether advance payments could be made on Certificates #1260 and #1408, and in reply have to say that I am advised that this cannot be done. The advance payments, of course, could be made and when the annual meeting is held in January [70] and dividends are portioned, the payments will draw their proportion of dividends and enhance the value of your stock, but, at the same time, you can understand that paying in money at this time and withdrawing it immediately would be of no service to the association, and it would be simply a matter of bookkeeping to withdraw stock which is not at present withdrawable. No officer of the company would have any authority to make any change in the situation. There will be no trouble, however, about your getting the money on these certificates in January, but I see no way of getting it before that time.

I regret that we have delayed answering your

(Testimony of Arthur A. Kline.)

letter and trust it has not caused you any inconvenience.

Yours very truly,

ARIZONA MUTUAL SAVINGS & LOAN
ASSOCIATION.

LEROY H. CIVILLE,

Secretary.

Dict.

A. J. E./GLF.”

(Letter introduced in evidence and marked as Plaintiff's Exhibit “L.”)

By Mr. LEWIS.—This letter is of the same general purport.

Q. Mr. Kline, I show you what purports to be a circular issued by the Arizona Trust Company; did you receive that circular from the Arizona Trust Company?

A. No, sir. I received that circular from Mr. Le Baron, who was in El Paso.

Q. Who was he?

A. He was the secretary of the Arizona Trust Company.

By Mr. STONEMAN.—I would like to know what the purpose of the introduction of this circular is.

By Mr. LEWIS.—The purpose of it is this, if your Honor please: A possible phase of this case is the good faith of this man in dealing with this company without any knowledge of it being in an insolvent condition. The circular which I am now offering to introduce is a circular of the company, and states the officers of the company and who they are, and contains various matters concerning the good stand-

(Testimony of Arthur A. Kline.)

ing of the company, and purports to have been issued along about the last of 1911. What time did you receive it, Mr. Kline?

A. Sometime in October.

Q. October, 1911? A. Yes, sir, 1911.

By Mr. LEWIS.—That would be then about six months before the time he sold this stock to the Arizona Trust Company. It has to my mind some weight upon the question of his duty to make further inquiry in regard to the solvency of the company, in regard to their condition, in regard to their right to make such transactions at the time he sold his stock to the Arizona Trust Company.

By the COURT.—Suppose he acted in good faith, would he not [71] be required to adjust his business with them on that basis. Was he not a stockholder?

By Mr. LEWIS.—He was not a stockholder of the Arizona Trust Company, and never was a stockholder of that company.

By the COURT.—I don't mean the Arizona Trust Company.

By Mr. LEWIS.—That is the company I have in mind and that is the circular I am offering.

By Mr. STONEMAN.—We object to the introduction of this circular, your Honor, in that as a stockholder in the Arizona Mutual, the plaintiff has no right to rely on statements made by any person except the proper officers of Mutual Loan Association, and further, that it was his duty as a stockholder to obtain from the records of the Association information concerning the solvency or insolvency

(Testimony of Arthur A. Kline.)

of the Association, and for that reason, it is immaterial for the purpose of proving any of the issues of this case.

By Mr. LEWIS.—I think it only one of those straws to which your Honor—

By the COURT.—I sustain the objection and allow you to introduce the testimony under Equity Rule 46.

Circular excluded and marked as Plaintiff's Exhibit "M."

By Mr. LEWIS.—I make no exception to the ruling. I hand you what purports to be a financial statement of the Arizona Mutual Savings & Loan Association, as of date December 31, 1910, and ask you when you received that.

A. I received that by mail.

Q. About when?

A. I think sometime in February.

Q. February, 1911?

A. February, 1911, somewhere along there.

By Mr. STONEMAN.—We object to the introduction of this testimony for any purpose if it is introduced for the purpose of showing the condition of the solvency of the Arizona Mutual Savings & Loan Association in any matters concerning the issues in this case. It is a circular showing the financial standing of the Arizona Mutual in 1910. On the further ground that it is incompetent, irrelevant and immaterial.

By Mr. LEWIS.—We are offering for the same purpose that we offered the last circular, for the purpose of showing what information was at the hands

(Testimony of Arthur A. Kline.)

of this man and what he had in mind when he dealt with the Arizona Mutual as he did deal.

By Mr. STONEMAN.—I have no objection to make on that ground except what I made to the circular preceding this offer, that it cannot in any way bind the Arizona Mutual Savings & Loan Association, nor is the recipient of such a circular entitled to rely upon the contents of it without going to the records themselves. [72]

By the COURT.—The ruling will be the same as on the question immediately preceding this one.

Circular excluded and marked as Plaintiff's Exhibit "N."

Mr. Kline then continued his testimony in direct examination as follows:

I went to Phoenix to see about the collection of the stock certificates of Florine Kline and my own stock certificate the latter part of February, 1912. I went to the office of the Mutual Savings & Loan Association and saw Mr. Olsen, the secretary. I told him that the reason for my coming was because I had received a letter from him saying that on account of the mismanagement of some of the officers the stock would not mature as soon as they thought it would. I asked him if I could see into the books, and he showed them to me. I am a bookkeeper and accountant and I looked over the stock-book. I did not look over any other books. I made inquiry from Mr. Olsen in regard to the financial condition of the Arizona Mutual Savings & Loan Association and he referred me to Mr. Edwards, who was the manager, and, as Mr. Olsen told me, either president or

(Testimony of Arthur A. Kline.)

vice-president of the loan association that year.

I saw Mr. Edwards that afternoon and talked with him in regard to the financial condition of the company. He said the company was in first-class condition, particularly after the examiner had examined it and thrown out some of the loans, which was the actual cause of my stock not maturing in January. I had a talk with him in regard to the payment for my stock and told him I was hard pressed for money and that I would like to get my money if possible. He said: "Can't tell you what I can do for you now, but I will see what can be done." I didn't see him any more that day. I had a letter to Mr. Christy of the [73] Valley Bank and I spoke to Mr. Christy about the Mutual Savings and Loan Association several times and he said that the Mutual was all right and had been examined by the bank examiner and said: "You will get your money in a short time." The next day I went to see Mr. Christy in the morning. I think it was March 1st, and there I met Mr. Tracy, who was the bank examiner who examined the Mutual Loan Association. He said he examined the association. I asked him what the condition of the association was. Mr. Tracy said: "It is absolutely solvent. It is worth dollar for dollar absolutely." Then I asked Mr. Christy whether he would not buy my stock or give me discount, and he said: "Well, you come around to-morrow and I will see what I can do." On the second, in the morning, he told me: "You go and see Mr. Edwards and I think you can fix it up." I went to see Mr. Edwards and I told him

(Testimony of Arthur A. Kline.)

how much I would pay in order to make it mature. He said that I couldn't do that, but that he would buy my stock. Mr LeBaron was to see me last October—I says, “I do not care to take any of the stock of the Trust Company; it is a new company; it seems pretty good, but I will not sell my stock to you.” He said: “I will take it from you, I will pay you what it's worth on the books of the company and give you a four months note with the privilege of paying cash, for which you allow me ten per cent should I pay you the cash within two weeks.” He said he would give me securities which were good. I asked him: “Are they yours?” and he said, “They are.” I said: “I will accept the offer, provided you leave the securities at the Valley Bank and if Mr. Christy finds that the securities are good I will turn over my stock to you in exchange for the note and the security. Then he wrote up an agreement. It was then late in the afternoon. Mr. Christy was not at the bank, but we finally found him and he gave us a receipt and took these securities. I don't think I asked any of the officers of the Arizona Mutual as to whether [74] the Trust Company owned these notes and mortgages which were put up as collateral security. Mr. Le Baron was present when the arrangement was made. I asked Mr. Edwards and Mr. LeBaron in regard to the securities.

Q. What did Mr. Edwards and Mr. Olsen tell you as to these securities that were introduced here as collateral security.

(Testimony of Arthur A. Kline.)

By Mr. STONEMAN.—We object to that, your Honor.

By Mr. LEWIS.—It is for the purpose of prohibiting the Arizona Building & Loan Association from claiming title to those notes and mortgages. In other words, even though Edwards was an officer of both companies, and even though Olsen was but the secretary of the Arizona Mutual, when this man asked them as to whether the Trust Company had the actual title, they having the apparent title, that the representations made by the officers of that company with reference to the actual state of the title is an element the Court should take into consideration in determining the issues in this case. There was none for him to go to, but the officers of this company. It seems to me that he pursued the duty of inquiry as far as any Court could insist that he go. He could not go any further than the officers of the company. There was no duty upon his part to go any further. They were the persons who were charged with the duty of making a claim for the Arizona Mutual if a claim existed, and if they made any claim to them, it seems to me that this man is relieved from any further inquiry, and the Arizona Mutual Savings and Loan Association is estopped by the representations of these officers.

By the COURT.—Made to one of their own shareholders?

By Mr. LEWIS.—It makes no difference whether made to one of their own shareholders or note. The shareholder cannot determine the question of

(Testimony of Arthur A. Kline.)

title by any method that I can conceive of except by going to the people who actually know in regard to the situation and asking about it. A shareholder in a company is not bound by a constructive knowledge of what actually exists, and there was, so far as now appears in this case, there was no record which would have imparted any different knowledge than what this man is seeking to testify to, namely, that the officers of the company told him that they belonged to the Arizona Trust Company. Until something to the contrary is shown, it seems to me that the evidence is at least *prima facie* sufficient to bind the company.

By the COURT.—We will let the witness answer the question; I will reserve my ruling on the evidence.

By Mr. STONEMAN.—If your Honor please, we urge as an additional ground to the objection that the Arizona Mutual should not be bound by these representations.

By Mr. LEWIS.—I understand that the Court will receive the evidence and reserve his ruling.
[75]

By the COURT.—Yes. Read the question, Mr. Reporter.

(Question read.)

WITNESS. (Resumes:)

They told me it was their property and that they owned it; that they had a right to do with it as they pleased; that they had acquired it by having about eighty or eighty-five per cent of

(Testimony of Arthur A. Kline.)

the original stock of the Mutual which they acquired by buying or by giving shares in the Arizona Trust Company for shares in the Mutual. They did not say anything else to me about these notes. I asked them whether the security they were going to give me to guarantee that note of \$5,532.00 was their own security. They said, Yes, they owned them; it was their own property and they could do with them as they pleased. It was Mr. Le Baron and Mr. Edwards who made that remark; not Mr. Olsen; they are the ones I had the transaction with. When I spoke about the mutual regarding its solvency, I spoke to Olsen and Edwards; Olsen was not present when I was talking to Le Baron and Edwards, nor was he present when I asked him in regard to who owned the notes. Le Baron and Edwards were present. I asked them whether they owned the securities they were going to give me for security for that note and they said they owned it and could do with it as they pleased and that they would not give me anything they didn't own.

By Mr. STONEMAN.—We move that the answer be stricken out, that it is immaterial in that the Arizona Mutual could not be bound by the statement as to the ownership of these notes made by either Edwards, Olsen or Le Baron.

By the COURT.—What do you say as to that?

By Mr. LEWIS.—If he was inquiring from Edwards as as officer of the Arizona Trust Company, I think Mr. Stoneman's contention is correct. In that event, the only force that this evidence would

(Testimony of Arthur A. Kline.)

have would be to show the state of this man's mind at the time he made this transaction.

By the COURT.—I sustain the objection.

By Mr. LEWIS.—Even though we offer it for the sole purpose of showing that he did make inquiry from the Trust [76] officers with reference to the ownership of the notes at that time.

By the COURT.—If you offer it solely for that purpose, I will admit it.

By Mr. LEWIS.—That is the limitation on the offer at the present time.

By the COURT.—The answer may stand with the rulings intervening as they now appear.

By Mr. STONEMAN.—If your Honor please, do I understand from the statement just made, that the only judgment that is desired is to run against the Arizona Trust Company.

By Mr. LEWIS.—The deficiency judgment is against the Arizona Trust Company.

By the COURT.—If the decree of February 12, 1913, stands, why there would not be anything in the Arizona Mutual in the treasury.

By Mr. STONEMAN.—No, sir.

By Mr. LEWIS.—I will tell your Honor frankly that I have lost track of those decrees; I really do not know but my theory in regard to this note is this, that Mr. Kline is entitled to the foreclosure of this collateral and the sale of it, if the receiver does not see fit to pay it off. If that does not satisfy, he holds a personal judgment against the Arizona Trust Company, they having been the makers of the note, and

(Testimony of Arthur A. Kline.)

if there is anything that the Arizona Trust Company has got that would be applicable to that deficiency judgment, then he could get it.

By the COURT.—In other words, the debt of the Arizona Trust Company, under the decree of February 12, 1912, should be paid before the stockholders of the Mutual get anything.

By Mr. LEWIS.—If that be so, Mr. Koine stands better than the stockholders in the old Mutual.

By Mr. STONEMAN.—Whereas, on the other hand, under the decree of March, 1914, Mr. Kline is directed to hand his claim to the Master in Chancery.

Cross-examination by Mr. STONEMAN.

When I first came up to Phoenix to talk this matter over I came up to see where the difficulties were in regard to the value of shares in the Arizona Mutual. I didn't know anything about the Arizona Trust Company at that time. I had heard during [77] the latter part of 1911 that A. J. Edwards and Le Baron were contemplating the merging of the assets of the Arizona Mutual Savings & Loan Association with the Arizona Trust Company.

Mr. Le Baron came to see me in El Paso with the idea of seeing whether I would exchange my shares in the Arizona Mutual for the same amount of shares in the Arizona Trust Company. I told him that I did not want to change my shares and he assured me that I would get my shares about the first of January and they told me that it had not matured.

(Testimony of Arthur A. Kline.)

Then I came to Phoenix myself and saw them. They did not pay the stock and I made inquiries and discovered that the examiner had withdrawn and thrown out a certain amount of loans that they had made and that had reduced the value of all the stock so that it had not matured.

Q. Didn't you just testify that some officers of the Arizona Mutual told you that because of the State Auditor's directing that certain securities should be stricked from the assets because they were not good securities that they were unable to pay matured stock at its maturity?

They could pay up to the value of the stock according to the value on the books. I came here with the idea of getting the cash payment for my stock at its matured value, but Mr. Olsen told me that it had not matured. It was only worth \$5,532.00 instead of \$6,000.00. I did not wait until it matured. I sold it right there and then. I did not know whether the loan association had the money to pay it or not. They said they couldn't according to their by-laws, declare the stock matured until it was matured.

I said the reason it did not mature was because the bank examiner took out certain loans.

I did not ask whether the Arizona Mutual had money in its treasury to pay off matured stock at its maturity. What I wanted to know was whether my stock had matured so I could [78] get my money.

I already testified exactly what the officer told me. That the bank examiner threw out certain loans

(Testimony of Arthur A. Kline.)

which reduced the value of the stockholders' stock. I made no other inquiry as to the financial condition of the Arizona Mutual except of Mr. Christy, who claimed he was a stockholder of the Mutual. I am a bookkeeper. I only went to the books to which I could get access to. I did not ask to see the ledger and account-books. I only asked to see the stock-books to see who the stockholders were. I had no talk with Edwards about his plan to secure stock of the Arizona Mutual for the Arizona Trust Company. When Mr. Le Baron was in El Paso he told me that he wanted to exchange my stock.

I stayed in Phoenix one day on my second visit. On my first visit I was here three days. The second time I was here in August. I heard some comment on the affairs of the company. Mr. Smith, who was in charge of the Arizona Trust Company at that time told me that there was talk about an action against the Arizona Trust Company and the Arizona Mutual Savings & Loan Association. That talk was in August. I sold my stock and took the note from the Arizona Trust Company on March second. Everything was completed in March. Mr. Smith told me in August that there were sufficient assets at that time to pay everybody.

Q. As a matter of fact, didn't the bank as your agent exchange the stock for the note under the authority and instructions given to the bank by you?

A. Yes, sir.

Q. That was in August?

A. No, sir, I don't know when it was. I wrote them

(Testimony of Arthur A. Kline.)

in the month of July about the payment of that note.

The reason that I took the note of the Trust Company with collateral instead of waiting for the stock to mature was that I was hard up for money and I thought I would be able [79] to discount the note. Mr. Edwards said himself that he would be likely to take up the note at a ten per cent discount. Edwards said when he told me that he would give me security for this note; that he had the right to do that. I relied on his statement. I made no inquiry of any other person at that time whether or not Edwards or the Arizona Trust Company could buy the stock of the Arizona Mutual. I knew that Edwards was a member of the Arizona Mutual and I knew at the time I was dealing with him that Edwards was also an officer of the Arizona Trust Company. Edwards led me to believe that he assumed the right as an officer of the Trust Company to say that the Arizona Mutual, in which company he also was an officer, would sell its stock to the Arizona Trust Company. I did not know at the time of my transaction with Edwards that the affairs of the Trust Company were being conducted by the same board of directors that were conducting the affairs of the Arizona Mutual. I only knew that one man was a director in both companies, and that was Mr. Edwards.

I had heard nothing in regard to the affairs of the Arizona Mutual being in bad shape. On the contrary, Mr. Christy told me that the Arizona Mutual

(Testimony of Arthur A. Kline.)

was in perfect condition. I found out since that Mr. Christy was mistaken when I heard there was a lawsuit against the Mutual in September, 1912, when someone sent me a slip to come to court.

I had a talk with Mr. Tracy about a minute or two about the affairs of the company in Mr. Christy's office at the Valley Bank and I asked him what the standing of the company was. He said, "Perfectly safe and sound as a dollar for the amount which it stands for. Of course, I had to reduce the loans."

The collateral for the note which the Arizona Trust Company [80] gave me was sent me by the bank some time in July or August, 1912. The securities were delivered to the bank March 2, 1912.

By the COURT.—Do you know that of your own knowledge?

A. We took them there ourselves, Mr. Edwards and myself, and I got a receipt from Mr. Christy for them.

By Mr. STONEMAN.—Were the securities turned over and attached to that note before the Valley Bank through Mr. Christy had approved of their value? A. How is that?

Q. The securities were not turned over before they had examined them? A. Yes, sir.

By Mr. LEWIS.—Did you understand that question? Read the question, Mr. Reporter.

(Question read.)

A. Yse, sir, they were turned over at the same time.

By the COURT.—I thought you said the securities were to be turned over to the bank and delivered

(Testimony of Arthur A. Kline.)

to the bank for your account after Mr. Christy had passed on them?

A. No, sir; the securities were to be delivered to Mr. Christy and he was to investigate them before he gave over my stock, and if they were all right he was to deliver the stock. My certificates were delivered to the bank at the same time; I have a letter from the bank approving the securities, dated some time in April, 1912. I wrote them then about discounting the note and I wrote them to keep the note and the papers there and to collect the note when it became due. Here is his letter of July 11th, in which he writes me that they did not pay the note and a short time afterwards I wrote him to send me all the papers. I was led by Mr. Christy to believe that the collateral notes were absolutely good security. I was willing to settle on a cash basis at a reduction of ten per cent for I was hard up and needed the money. [81]

Redirect Examination by Mr. LEWIS.

The first time I came to Phoenix was February 28th or 29th, 1912, and I stayed here continuously until this transaction was completed. I came back to Phoenix in August or September, 1912.

Mr. Balke wrote me a letter saying that Mr. W. T. Smith had taken charge of the Arizona Trust Company and that Smith told him to write me that everything would be all right and I would get my money dollar for dollar. Then I wrote Mr. Smith a letter and he sent me a letter in which he said the same thing. I was going to California in August, and I

(Testimony of Arthur A. Kline.)

stopped over one day and I saw Mr. Smith and spoke to him about my note, and he said: "You will get every dollar of the money. I will pay you the interest now. I can't pay it myself now, because I have to see my associates." I told him I did not like to wait long and he promised to pay me \$1,500 or \$2,000 within a few days and then I went on to California. I wrote or telegraphed Mr. Christy from San Francisco and he telegraphed me that Mr. Smith had not made the payment.

Witness excused. [82]

By Mr. LEWIS.—It has been agreed between counsel that the escrow envelope and the papers as they actually existed in escrow shall be received in evidence as a part of plaintiff's case and it shall also appear that this escrow envelope with the papers enclosed came from the Valley Bank and had been in the Valley Bank's possession ever since.

Escrow envelope with papers enclosed received in evidence and marked Exhibit "O" as follows:

"No.508.

NOTE AND COLLATERAL NOTES IN ESCROW.

From Arthur A. Kline, El Paso, (hereinafter called the first party), to Arizona Trust Company (hereinafter called the second party).

Total consideration \$5532 and Int.

TO THE VALLEY BANK

Phoenix, Arizona.

This envelope is deposited with you in Escrow, subject only to the following instructions:

The within papers are to be delivered to the above-designated second party, its order or assigns, upon demand, if said second party, its agents or assigns, shall deposit with you for the credit and use of the above designated first party, the full amount of the total consideration hereinabove written; the time and terms of payment being as follows, to-wit: 1st payment to be made on or before 7—1 1912 \$5532.00 with interest at 8% from 3/2-12.

But if said payments or any of them are not made at the times and in the amounts hereinabove stated, you will accept no further payments and deliver enclosed papers to ———, or order, on demand, time being of the essence of these instructions.

You are hereby released from any and all liability and claim or claims whatsoever in connection with receiving, retaining and delivering the same, except that in case any payment is made hereon, as above stated, you will credit as per above instructions, less your charge of \$1.00 per \$1000 of the amounts so paid, together with the amount, if any, paid by you for legal expenses connected herewith, which amount you are hereby authorizd to deduct and hold out.

These charges, in addition to the charge for filing and indexing required at the time papers are deposited, being the minimum as fixed by the Associated Banks of Phoenix.

Filed and indexed Mar. 16, 1912.

Papers enclosed sent Mr. Kline via mail by Cashier 9—; 7—12.”

(Enclosed in the above-mentioned envelope were Certificate #1260 for 40 shares issued to Florine Kline dated August 1, 1900, and certificate #1408, for 20 shares issued to A. Kaplan, April 1, 1901 and transferred to Arthur A. Kline, El Paso, and approved by the Company January 8, 1903, together with original of instructions to Valley Bank Exhibit “B,” above.)

(There are no Plaintiff’s Exhibits “M” and “N” in the record.) [83]

Plaintiff rests his case.

By Mr. STONEMAN.—We think, as has been developed in this hearing this afternoon, that the facts as far as they can be, are pretty well admitted and agreed to. We have no evidence which I could submit which would aid the Court in any way upon the facts in the case, and therefore are not submitting any evidence because of an agreement with Mr. Lewis that the defendants were not to be called upon to submit certified copies of the two decrees pled in the answer which Mr. Lewis and I have agreed contain the facts so far as they are referred to in the answer. Is that true, Mr. Lewis?

By Mr. LEWIS.—That is correct. We make no objection to the form of the proof. We do object to the competency and relevancy of the judgments themselves upon the ground that we were not parties to this litigation and that our interest, if any we had, initiated prior to the institution of that suit, and therefore we are not barred by any decree which

may have been rendered in the Clark litigation.

By Mr. STONEMAN.—With that exception, it may be stipulated then that we will use in this suit the two decrees as they appear in the records in this court?

By Mr. LEWIS.—That is correct.

Decrees as pled received, subject to the objection. Which objection was later and upon the 4th day of October, 1915, overruled and the exception of the plaintiff to the ruling of the Court admitting said decrees was then and there duly entered of record.
[84]

That said decrees as pled in said answer and received in evidence are as follows:

[Decree as Pled in Answer.]

“That heretofore, to wit, on the 27th day of February, 1913, by a decree of the above-entitled court duly made and entered in the case of Charles W. Clark vs. The Arizona Mutual Savings and Loan Association, and The Arizona Trust Company, it was found and determined that at the time of the attempted transfer by the Arizona Mutual Savings and Loan Association to The Arizona Trust Company of the assets of said The Arizona Mutual Savings and Loan Association, including the assets involved in this action, The Arizona Trust Company, defendant herein, had no right, power or authority to receive from said The Arizona Mutual Savings and Loan Association, any of said assets and that said attempted transfer was for the reasons set forth in said decree, void and of no effect.

That subsequent to the rendition of said decree by an order and modification thereof, duly made and entered in the above-entitled court, on the 12th day of March, 1914, in said action wherein said Charles W. Clark is complainant and The Arizona Mutual Savings and Loan Association, and the Arizona Trust Company are defendants, it was further ordered, adjudged and decreed that said attempted transfer of said assets was and is void, and in accordance with the terms of both of said decrees, the Receiver was directed to receive and report to the Master in Chancery of this Court, all claims against either said The Arizona Mutual Savings and Loan Association or the Arizona Trust Company, whether said claims should arise through claim as creditor or should arise through claim as stockholder or either of said companies.”

Statement of the evidence in the above-entitled cause prepared by complainant and appellant, as corrected under the direction of the Court.

THOS. ARMSTRONG, Jr.,
ERNEST W. LEWIS,
R. L. MORGAN,

Solicitors for Complainant and Appellant.

Solicitors' address: 312 Nat'l Bank of Ariz. Bldg.,
Phoenix, Arizona. [85]

The foregoing statement of the evidence being corrected in accordance with the direction of the Judge of the above-named Court upon the suggestions and objections of the appellees, is hereby accepted as a

correct statement of the evidence.

Dated at Phoenix, Arizona, November 24, 1915.

GEORGE J. STONEMAN,

Solicitor for Appellees.

[Order Approving Statement of Evidence.]

The foregoing statement of the evidence in the above-entitled cause being corrected in accordance with the orders of this Court, is hereby approved and it is ordered filed in the clerk's office as a part of the record in said cause for the purposes of the appeal herein.

Dated November 26th, 1915.

WM. H. SAWTELLE,

Judge. [86]

[Endorsed]: In the District Court of the United States for the District of Arizona. Arthur A. Kline, Complainant and Appellant, vs. The Arizona Mutual Savings and Loan Association, a corporation, et al., Defendants and Appellees. In Equity—No. E-25 (Phoenix). Statement of the Evidence as Corrected.

[Endorsed]: No. 2692. United States Circuit Court of Appeals for the Ninth Circuit. Arthur A. Kline, Appellant, vs. The Arizona Mutual Savings and Loan Association, a Corporation, The Arizona Trust Company, a Corporation, and Sims Ely, as Receiver of the Arizona Mutual Savings and Loan Association and as Receiver of the Arizona Trust Company, Appellees. Transcript of Record. Upon

Appeal from the United States District Court for the
District of Arizona.

Received November 29, 1915.

F. D. MONCKTON,
Clerk.

Filed December 1, 1915.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.

